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No. 06-

IN THE
# Supreme Court of the United States

EL PASO TENNESSEE PIPELINE CO.,
*Petitioner,*

v.

GLADYS YOLTON *et al.*,
*Respondents.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether collectively-bargained retiree health-care benefits are "vested" for the life of the retiree when the collective bargaining agreement contains neither a "clear statement" that such benefits are for life nor any language that might be "reasonably construed" to provide lifetime benefits, and includes a clause limiting the insurance agreement – the only source of the retiree health-care benefits – to the term of the collective bargaining agreement.

## PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 14.1, petitioner states that the parties to the proceedings in the court whose judgment is sought to be reviewed were Gladys Yolton, Wilbur Montgomery, Elsie Teas, Robert Betker, Edward Maynard, and Gary Halsted, on behalf of themselves and a similarly situated class, El Paso Tennessee Pipeline Co., and Case Corporation, now known as CNH America LLC.

## RULE 29.6 STATEMENT

Petitioner El Paso Tennessee Pipeline Co. has one publicly-traded parent company – El Paso Corporation – which owns 100% of its stock.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| PARTIES TO THE PROCEEDINGS | ii |
| RULE 29.6 STATEMENT | ii |
| TABLE OF AUTHORITIES | v |
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| STATUTORY PROVISIONS INVOLVED | 2 |
| INTRODUCTION | 3 |
| STATEMENT OF THE CASE | 3 |
| 1. *The Collective Bargaining Agreements* | 4 |
| 2. *Decisions Below* | 5 |
| REASONS FOR GRANTING THE PETITION | 7 |
| I. THE CIRCUITS ARE IN DEEP, LONG-STANDING CONFLICT ABOUT THE PROPER LEGAL STANDARD FOR DETERMINING WHETHER COLLECTIVELY-BARGAINED RETIREE HEALTH-CARE BENEFITS ARE VESTED FOR LIFE | 8 |
| A. The Courts Of Appeals Have Applied Three Different Standards To The Question Of When Collectively-Bargained Retiree Health-care Benefits Are Vested | 8 |
| B. The Courts Of Appeals Disagree As To Whether The Same Standard Applies To Both Collective Bargaining Agreements And ERISA Plans | 13 |

TABLE OF CONTENTS – continued

Page

C. The Conflict In The Circuits As To The Proper Standard Is Outcome-Determinative In Many Cases, Including The Present One ..... 17

D. This Case Implicates Three Subsidiary Conflicts As To The Interpretation Of Identical Language In Collective Bargaining Agreements ..... 18

II. THE ISSUE IS RECURRING AND IMPORTANT ..... 21

CONCLUSION ..... 25

TABLE OF AUTHORITIES

CASES Page

*Abbruscato* v. *Empire Blue Cross & Blue Shield*, 274 F.3d 90 (2d Cir. 2001) ..... 13
*Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985) ..... 23
*Am. Fed'n of Grain Millers* v. *Int'l Multifoods Corp.*, 116 F.3d 976 (2d Cir. 1997) ..... 9, 22
*Anderson* v. *Alpha Portland Indus., Inc.*, 836 F.2d 1512 (8th Cir. 1988) ..... 12, 14, 21, 22
*Armistead* v. *Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991) ..... 15, 22
*Barnett* v. *Ameren Corp.*, 436 F.3d 830 (7th Cir. 2006) ..... 16, 22
*Bazzone* v. *Auto. Indus. Welfare Fund*, 860 F.2d 1088 (9th Cir. 1988), *available at* 1988 WL 58340 ..... 22
*Bidlack* v. *Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993) ..... 10, 12, 16, 22, 24
*Bower* v. *Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984) ..... 12, 22
*In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991) ..... 22
*Cherry* v. *Auburn Gear, Inc.*, 441 F.3d 476 (7th Cir. 2006) ..... 11, 16, 22
*Chiles* v. *Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996) ..... 10
*Diehl* v. *Twin Disc., Inc.*, 102 F.3d 301 (7th Cir. 1996) ..... 16, 22
*Dist. 29, UMW* v. *Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985) ..... 22
*Dist. 29, UMW* v. *UMW 1974 Benefit Plan & Trust*, 826 F.2d 280 (4th Cir. 1987) ..... 22
*Gable* v. *Sweetheart Cup Co.*, 35 F.3d 851 (4th Cir. 1994) ..... 10

TABLE OF AUTHORITIES – continued

Page

*Golden* v. *Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996) ..... 10, 15, 20, 22

*Int'l Ass'n of Machinists* v. *Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997) ..... 12, 22

*Int'l Union, United Auto. Workers* v. *Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999) ..... *passim*

*Int'l Union, United Auto. Workers of Am.* v. *BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999) ..... *passim*

*Int'l Union, United Auto. Workers of Am.* v. *Cadillac Malleable Iron Co.*, 728 F.2d 807 (6th Cir. 1984) ..... 15, 22

*Int'l Union, United Auto. Workers of Am.* v. *Rockford Powertrain, Inc.*, 350 F.3d 698 (7th Cir. 2003) ..... 16, 22

*Int'l Union, United Auto. Workers of Am.* v. *Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983) .... 14, 15, 21, 22

*Jensen* v. *SIPCO, Inc.*, 38 F.3d 945 (8th Cir. 1994) ..... 10

*John Morrell & Co.* v. *United Food & Comm. Workers Int'l Union*, 37 F.3d 1302 (8th Cir. 1994) ..... 22

*Jones* v. *Am. Gen. Life & Accident Ins. Co.*, 370 F.3d 1065 (11th Cir. 2004) ..... 10

*Joyce* v. *Curtiss-Wright Corp.*, 171 F.3d 130 (2d Cir. 1999) ..... 11, 13, 20, 22

*Keffer* v. *H.K. Porter Co.*, 872 F.2d 60 (4th Cir. 1989) ..... 22

*Litton Fin. Printing Div.* v. *NLRB*, 501 U.S. 190 (1991) ..... 9, 10

*Maurer* v. *Joy Techs., Inc.*, 212 F.3d 907 (6th Cir. 2000) ..... 15, 16, 22

*McCoy* v. *Meridian Auto. Sys., Inc.*, 390 F.3d 417 (6th Cir. 2004) ..... 15, 20, 22

TABLE OF AUTHORITIES – continued

Page

*Murphy* v. *Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995) ..... 16, 22

*Pabst Brewing Co.* v. *Corrao*, 161 F.3d 434 (7th Cir. 1998) ..... 16, 22

*Policy* v. *Powell Pressed Steel Co.*, 770 F.2d 609 (6th Cir. 1985) ..... 15, 22

*Rossetto* v. *Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000) ..... *passim*

*Ryan* v. *Chromalloy Am. Corp.*, 877 F.2d 598 (7th Cir. 1989) ..... 16, 22

*Schonholz* v. *Long Island Jewish Med. Ctr.*, 87 F.3d 72 (2d Cir. 1996) ..... 10

*Sengpiel* v. *B.F. Goodrich Co.*, 156 F.3d 660 (6th Cir. 1998) ..... 20

*Senior* v. *NSTAR Elec. & Gas Corp.*, 449 F.3d 206 (1st Cir. 2006) ..... 8, 12, 14, 22

*Senn* v. *United Dominion Indus.*, 951 F.2d 806 (7th Cir. 1992) ..... 16, 19, 22

*Senn* v. *United Dominion Indus., Inc.*, 962 F.2d 655 (7th Cir. 1992) ..... 9

*Smith* v. *ABS Indus., Inc.*, 890 F.2d 841 (6th Cir. 1989) ..... 15, 22

*Sprague* v. *Gen. Motors Corp.*, 133 F.3d 388 (6th Cir. 1998) ..... 10

*Stewart* v. *KHD Deutz of Am., Corp.*, 980 F.2d 698 (11th Cir. 1993) ..... 12, 19, 22

*Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95 (1962) ..... 24

*Trull* v. *Dayco Prods.*, No. 04-2109, 2006 WL 1130926 (4th Cir. Apr. 28, 2006) ..... 12, 13, 22

*In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig.*, 58 F.3d 896 (3d Cir. 1995) ..... 10

*UAW* v. *Gen. Motors Corp.*, No. 05-CV-7399-DT, 2006 WL 891151 (E.D. Mich. Mar. 3, 2006) ..... 23

TABLE OF AUTHORITIES – continued

Page

*United Food & Comm. Workers Int'l Union* v. *Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985) ..... 22

*United Paperworkers Int'l Union* v. *Champion Int'l Corp.*, 908 F.2d 1252 (5th Cir. 1990) .. 12, 14, 22

*United Steelworkers of Am.* v. *Connors Steel Co.*, 855 F.2d 1499 (11th Cir. 1988) ..... 22

*United Steelworkers of Am.* v. *Textron, Inc.*, 836 F.2d 6 (1st Cir. 1987) ..... 22

*Vallone* v. *CAN Fin. Corp.*, 375 F.3d 623 (7th Cir.), *cert. denied*, 543 U.S. 1021 (2004) ..... 20

*Weimer* v. *Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985) ..... 15, 22

*Wise* v. *El Paso Natural Gas Co.*, 986 F.2d 929 (5th Cir. 1993) ..... 10, 14

*Yolton* v. *El Paso Tenn. Pipeline Co.*, No. 02-75164, 2004 WL 3661450 (E.D. Mich. Mar. 9, 2004) ..... 4

*Yolton* v. *El Paso Tenn. Pipeline Co.*, No. 02-75164, 2004 WL 3664179 (E.D. Mich. Nov. 3, 2004), *aff'd*, 435 F.3d 571 (6th Cir. 2006) ..... 4

STATUTES

29 U.S.C. § 185 ..... 2

§ 1132 ..... 2

SCHOLARLY AUTHORITY

Jeffrey S. Klein & Nicholas J. Pappas, *Recent Developments in Retiree Health Benefits Litigation*, N.Y.L.J., June 5, 2006 ..... 17

## PETITION FOR A WRIT OF CERTIORARI

El Paso Tennessee Pipeline Co. ("El Paso" or "petitioner") hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in *Yolton* v. *El Paso Tennessee Pipeline Company*, 435 F.3d 571 (Jan. 17, 2006).

## OPINIONS BELOW

The panel opinion of the United States Court of Appeals for the Sixth Circuit is reported at 435 F.3d 571 and is reproduced at Petitioner's Appendix ("Pet. App.") 1a-38a. The opinion of the court of appeals denying the petition for rehearing with suggestion for rehearing en banc, dated May 9, 2006, is reproduced at Pet. App. 72a. The opinion of the United States District Court for the Eastern District of Michigan and its initial order granting a preliminary injunction are reported at 318 F. Supp. 2d 455 and reproduced at Pet. App. 39a-71a.

## JURISDICTION

The opinion and judgment of the court of appeals were issued on January 17, 2006. A timely petition for rehearing with suggestion for rehearing en banc was denied on May 9, 2006. This Court has jurisdiction to review this case pursuant to 28 U.S.C. § 1254(1).

The district court had jurisdiction of this case under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185, and Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(e)(1). The Sixth Circuit had jurisdiction of this case pursuant to 28 U.S.C. § 1292(a)(1).

## STATUTORY PROVISIONS INVOLVED

Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, provides in pertinent part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Sections 502(a)(1)(B) and 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B) and (a)(3), provide:

> (a) Persons empowered to bring a civil action.
>
> A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> . . . .
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> . . . .
>
> (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. . . .

## INTRODUCTION

The decision below takes its place in a long line of cases in which the federal courts of appeals have been asked to address the "much-litigated issue of when a right to health benefits that is granted to retired workers by a collective bargaining agreement ... survives the termination of the agreement." *Rossetto* v. *Pabst Brewing Co.*, 217 F.3d 539, 541 (7th Cir. 2000). This issue has produced a welter of inconsistent rules governing the general question of what presumption governs interpretation of the collective bargaining agreement in these circumstances and several subsidiary questions regarding the meaning of specific language in an agreement. Several courts of appeals have embraced and adopted legal rules that correctly require clear language in a collective bargaining agreement in order to find retiree health-care benefits vested for life. Others, however, including the Sixth Circuit, infer that employers have agreed to this long-term, devastating liability despite the silence or ambiguity of the negotiated agreement.

The conflicting positions taken by the courts of appeals on these questions lead to different results in similar cases depending solely on the location in which suit is filed, and to completely anomalous results for employers whose plants and operations span several circuits. The current state of affairs is manifestly inconsistent with Congress's judgment, embodied in Section 301 of the Labor Management Relations Act, that collective bargaining agreements should be given uniform interpretation throughout the nation. The multiple, acknowledged and interrelated conflicts on this fundamental issue of federal labor law require this Court's review and resolution.

## STATEMENT OF THE CASE

Respondents, six hourly retirees or surviving spouses of hourly retirees of the JI Case Company, filed a class action, claiming that they are entitled to fully-funded lifetime health-

care benefits pursuant to the collective bargaining agreement in effect between their employer and their union when they retired. Pet. App. 39a. The district court concluded that, under the legal rules that the Sixth Circuit applies in determining whether collectively-bargained retiree health-care benefits are vested for life, respondents are likely to succeed on the merits of their claim. The court thus granted their motion for a preliminary injunction, and entered an order requiring El Paso to pay the full costs of their health-care benefits.[1] *Id.* at 50a-62a, 71a. The court of appeals affirmed the judgment of the district court, agreeing that respondents are likely to succeed on their claim that their health-care benefits are vested for life. *Id.* at 8a-21a.

1. *The Collective Bargaining Agreements.*

Respondents claim that they are entitled to fully-funded, lifetime health-care benefits under a collective bargaining agreement that was negotiated by the International Union, United Automobile, Aerospace and Agricultural Workers of America ("UAW") and JI Case. Pet. App. 3a-4a, 39a. UAW and JI Case also negotiated a group insurance plan that addresses group insurance benefits for various categories of employees and former employees. The collective bargaining agreement contains the following language incorporating, and

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[1] A separate question adjudicated below was, assuming respondents' benefits are vested, who as between El Paso and CNH America ("CNH") is responsible for providing them. The district court initially ordered El Paso to provide the benefits. Pet. App. 71a. Later, the district court concluded that CNH was liable for the benefits, vacated the order requiring El Paso to provide the benefits, and entered an order requiring CNH to provide them. *Yolton* v. *El Paso Tenn. Pipeline Co.*, No. 02-75164, 2004 WL 3661450 (E.D. Mich. Mar. 9, 2004). Later still, the district court concluded that El Paso had assumed CNH's liability and ordered it to indemnify CNH for future payments. *Yolton* v. *El Paso Tenn. Pipeline Co.*, No. 02-75164, 2004 WL 3664179 (E.D. Mich. Nov. 3, 2004). The court of appeals affirmed the district court's order in this respect. Pet. App. 38a. El Paso does not seek review of this ruling in this petition.

limiting the term of, the group insurance plan: "'The group insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made a part of this Agreement.'" *Id.* at 3a.

The group insurance plan provides that employees retiring under JI Case's "'Pension Plan for Hourly Paid Employees'" or "'their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan'" are eligible for health-care benefits. Pet. App. 41a-42a. The plan further states that "'the Company shall pay the full premium cost'" of eligible retirees' and spouses' health-care benefits. *Id.* at 3a-4a. These are the only provisions of the collective bargaining agreement or plan that address retirees' entitlement to company-provided health-care benefits. See Joint Appendix in Court of Appeals ("JA") 2002-2156, 1497-1570 (the collective bargaining agreement and plan, respectively). No provision of the plan or the collective bargaining agreement states that the company will continue to provide health-care benefits to retirees after the expiration of the collective bargaining agreement.

2. *Decisions Below.*

(a) The district court concluded that respondents are likely to succeed on their claim that their health-care benefits are fully vested for life. Pet. App. at 62a. The district court based this conclusion on two aspects of the collective bargaining agreement. First, the district court emphasized that the agreement links retirees' eligibility for health-care benefits to eligibility for lifetime pension benefits. *Id.* at 53a ("[S]ince retirees are eligible to receive pension benefits for life, it therefore appears that the parties intended the employer to provide lifetime health benefits as well."). According to the district court, an intent to create lifelong health-care benefits can be inferred from this language in the agreement. *Id.* at 55a.

Second, the district court emphasized that the group insurance plan contains no express limitation on the duration of retiree health-care benefits, but does contain provisions limiting the amount of time that the company will provide benefits to employees on lay-off or maternity leave. Pet. App. 53a-54a. The district court reasoned that the inclusion of these specific durational limitations for employees on lay-off or maternity leave suggests that retiree health-care benefits, not so limited, were intended to be lifetime benefits. *Id.*

The district court rejected El Paso's argument that the collective bargaining agreement's durational clause, which states that the group insurance plan will run concurrently with the collective bargaining agreement, expresses the parties' intent that benefits would cease upon the expiration of the collective bargaining agreement. Pet. App. 54a-55a. The district court also rejected El Paso's argument that inferring an intent to vest benefits would be inconsistent with language in the plan descriptions stating that the employer reserved the right, subject to the collective bargaining agreement, to terminate or change the plan in the future. *Id.* at 55a-57a.

Finally, the district court concluded that, "[e]ven if the parties' intent were not clear based on the express language of the various labor agreements," respondents nonetheless "present[ed] substantial extrinsic evidence to demonstrate that the UAW and Case intended to provide retirees and surviving spouses fully funded, lifetime health insurance benefits." Pet. App. 57a.

(b) The court of appeals affirmed the judgment of the district court. The court of appeals first noted that, in determining whether collectively-bargained retiree health-care benefits are vested, the Sixth Circuit does not employ any presumption either against or in favor of vesting, but instead simply applies "ordinary principles of contract interpretation." Pet. App. 12a-13a. The court applied the Circuit's established legal framework to the collective

bargaining agreement and plan at issue here. In so doing, the court recapitulated the reasoning of the district court, agreeing with its conclusions in all relevant respects.

Like the district court, the court of appeals concluded that the language providing health-care benefits to retired employees receiving pension benefits demonstrates an intent to vest the health-care benefits. Pet. App. 13a, 21a. The court also agreed with the district court that the fact that retiree health-care benefits, unlike lay-off and maternity-leave benefits, are not subject to specific durational limitations gives rise to an inference that they are vested for life. *Id.* at 16a.

Like the district court, the court of appeals rejected El Paso's argument that the durational clause that limits the group insurance plan to the term of the collective bargaining agreement also limits the company's liability for benefits to the term of the collective bargaining agreement. Pet. App. 14a-15a. The court concluded that, "[a]bsent specific durational language referring to retiree benefits themselves, . . . the general durational language says nothing about those retiree benefits." *Id.* at 14a. The court also rejected the argument that the reservation-of-rights clause in the plan documents demonstrates that the benefits are not vested. *Id.* at 17a-18a.

Finally, the court of appeals concluded that, "[e]ven if the agreements were ambiguous, the extrinsic evidence cited by the district court" supported respondents' claim of entitlement to health-care benefits that are vested for life. Pet. App. 21a.

## REASONS FOR GRANTING THE PETITION

The question of the correct legal standard to apply in determining whether collectively-bargained retiree health-care benefits are vested for life is both important and recurring. Its repeated consideration has produced a deep-seated, well-documented conflict among the courts of

appeals. This conflict is squarely implicated in this case, which would have been decided differently in the Second, Third, Seventh, and Eighth Circuits. Those circuits correctly recognize that in order to conclude that an employer agreed to take on the open-ended, expensive commitment of lifetime retiree health-care benefits, that agreement must be clearly expressed in the collectively-bargained language. The court below, like other circuits, was willing to *infer* the employer's agreement to assume this liability from certain nuances of the agreement – an inference that could not be drawn without a strong implicit presumption that benefits should be vested for life.

The conflict among the circuits subjects employers, unions, and employees to multiple and conflicting rules of law. The resulting fragmented legal regime is both fundamentally unfair and plainly inconsistent with the statutory interest in uniform interpretation of collective bargaining agreements embodied in Section 301 of the LMRA.

## I. THE CIRCUITS ARE IN DEEP, LONG-STANDING CONFLICT ABOUT THE PROPER LEGAL STANDARD FOR DETERMINING WHETHER COLLECTIVELY-BARGAINED RETIREE HEALTH-CARE BENEFITS ARE VESTED FOR LIFE.

### A. The Courts Of Appeals Have Applied Three Different Standards To The Question Of When Collectively-Bargained Retiree Health-care Benefits Are Vested.

The question of what standard to apply in determining whether collectively-bargained retiree health-care benefits are vested has produced a persistent, frequently-cited conflict among the courts of appeals. See, *e.g.*, *Senior* v. *NSTAR Elec. & Gas Corp.*, 449 F.3d 206, 216 (1st Cir. 2006) (noting that "the circuits have taken somewhat different approaches to resolving the question of whether a labor agreement has

created vested rights in benefits"); *Rossetto*, 217 F.3d at 543 (observing that the courts of appeals that have addressed the issue are "all over the lot"); *Am. Fed'n of Grain Millers* v. *Int'l Multifoods Corp.*, 116 F.3d 976, 980 (2d Cir. 1997) (noting that "the circuits disagree as to exactly what language is required to create a promise to vest retiree medical benefits"). All circuits agree that, if the collective bargaining agreement is unambiguous, it controls. *Id.* However, where agreements are ambiguous or silent as to vesting, as they generally are, the courts of appeals strongly disagree about the legal rules and interpretive presumptions that apply and about whether and when extrinsic evidence of the bargaining parties' intent is admissible. The courts of appeals have taken at least three distinct approaches to these questions.

The first approach requires the application of a clear statement rule. Under this approach, which the Third Circuit employs, the court presumes that collectively-bargained retiree health-care benefits are *not* vested unless the "employer's commitment to vest such benefits . . . [is] stated in clear and express language." *Int'l Union, United Auto. Workers* v. *Skinner Engine Co.*, 188 F.3d 130, 139 (3d Cir. 1999). The logical implication of this rule is that it is never necessary to resort to extrinsic evidence of the parties' intent. Either the agreement expressly provides for vested benefits, in which case the retirees prevail, or it does not, in which case the employer prevails. See *Senn* v. *United Dominion Indus., Inc.*, 962 F.2d 655, 656 (7th Cir. 1992) (Cudahy, J., dissenting from denial of rehearing en banc) (a clear statement rule "prevents extrinsic evidence from *ever* being considered").

The Third Circuit's approach draws support from this Court's opinion in *Litton Financial Printing Division* v. *NLRB*, 501 U.S. 190 (1991). There, this Court stated that generally "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement," but that there is an exception "if a collective-bargaining agreement provides *in explicit terms* that certain benefits

continue after the agreement's expiration." *Id.* at 207 (emphasis added). See also *Bidlack* v. *Wheelabrator Corp.*, 993 F.2d 603, 617 (7th Cir. 1993) (en banc) (Easterbrook, J., dissenting) (arguing that *Litton* requires a clear statement rule); but see *Golden* v. *Kelsey-Hayes Co.*, 73 F.3d 648, 655 (6th Cir. 1996) (rejecting the argument that *Litton* requires a clear statement rule). This approach is also used by most courts to determine whether retiree health-care benefits provided solely by an ERISA plan document are vested (*i.e.*, courts apply a clear statement rule in pure ERISA plan cases where no collective bargaining agreement is involved). See *Sprague* v. *Gen. Motors Corp.*, 133 F.3d 388, 400 (6th Cir. 1998) (en banc) (requiring that the intent to vest retiree health-care benefits be found in the plan documents and be stated in clear and express language); *Chiles* v. *Ceridian Corp.*, 95 F.3d 1505, 1513 (10th Cir. 1996) (same); *In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig.*, 58 F.3d 896, 902 (3d Cir. 1995) (same); *Gable* v. *Sweetheart Cup Co.*, 35 F.3d 851, 855 (4th Cir. 1994) (same); *Wise* v. *El Paso Natural Gas Co.*, 986 F.2d 929, 937 (5th Cir. 1993) (same).[2]

In petitioner's view, this approach correctly apprehends the standard – an employer would not implicitly agree to such open-ended and enormous liability. This practical reality was similarly reflected in this Court's restrictive approach to open-ended obligations in *Litton*. But, what is critical here is

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[2] Two courts have expressly rejected the clear statement rule in the pure ERISA plan context. *See Jones* v. *Am. Gen. Life & Accident Ins. Co.*, 370 F.3d 1065, 1070 (11th Cir. 2004); *Schonholz* v. *Long Island Jewish Med. Ctr.*, 87 F.3d 72, 78 (2d Cir. 1996). Another circuit has done so implicitly by holding that benefits were vested where the plan documents were ambiguous. *See Jensen* v. *SIPCO, Inc.*, 38 F.3d 945, 949-52 (8th Cir. 1994). The Solicitor General of the United States recently demonstrated that the circuit conflict in pure ERISA cases is "persistent and well-developed," "has substantial recurring importance," and "is outcome-determinative in many cases." Brief for the United States as *Amicus Curiae* at 8, *Empire Blue Cross & Blue Shield* v. *Byrnes*, 537 U.S. 1170 (2003) (No. 01-1710) (cert. denied).

that this is only one of three entirely different interpretive approaches applied by the courts of appeals.

Under the second approach taken by the courts of appeals, the court does not require clear and express vesting language, but does require that there be at least *some language that could reasonably be construed as creating a promise to provide lifetime benefits*. In other words, the court presumes that the benefits are *not* vested if the collective bargaining agreement is silent as to vesting. The Second and Seventh Circuits use variations of this approach. In the Seventh Circuit, "[i]f a collective bargaining agreement is completely silent on the duration of health benefits, the entitlement to them expires with the agreement, as a matter of law . . . unless the plaintiff can show by objective evidence that the agreement is latently ambiguous." *Rossetto*, 217 F.3d at 547. This standard is not as demanding as the Third Circuit's clear statement rule, for it allows plaintiffs to reach the jury, and there to introduce extrinsic evidence of the parties' intent, if the agreement is ambiguous. *Id.* Nonetheless, the Seventh Circuit has emphasized that "[t]he presumption that healthcare benefits do not exceed the life of an agreement imposes a high burden of proof upon the retirees." *Cherry* v. *Auburn Gear, Inc.*, 441 F.3d 476, 481 (7th Cir. 2006).

Similarly, in the Second Circuit, plaintiffs can survive summary judgment only if they "have identified specific written language that is reasonably susceptible to interpretation as a promise . . . to vest the retirees' health benefits." *Joyce* v. *Curtiss-Wright Corp.*, 171 F.3d 130, 134 (2d Cir. 1999). This language need not be unambiguous, *id.*, but there must be something more than silence. The court "will not infer a binding obligation to vest benefits absent some language that itself reasonably supports that interpretation." *Id.* at 135.

In dramatic contrast, yet a third approach is expressly employed by three circuits, and implicitly applied by four others. Under that framework, the court does not employ *any*

presumption as to vesting. The First, Fifth, and Sixth Circuits assert that they have specifically rejected the use of interpretive presumptions in this context. See *Senior*, 449 F.3d at 216-18; *Int'l Ass'n of Machinists* v. *Masonite Corp.*, 122 F.3d 228, 231-32 (5th Cir. 1997); Pet. App. 12a. And the Fourth, Eighth, Ninth, and Eleventh Circuits have implicitly adopted this interpretive regime by resolving cases without employing any presumption. See, *e.g.*, *Trull* v. *Dayco Prods.*, No. 04-2109, 2006 WL 1130926, at *1-2 (4th Cir. Apr. 28, 2006) (unpublished); *Anderson* v. *Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1516-20 (8th Cir. 1988); *Bower* v. *Bunker Hill Co.*, 725 F.2d 1221, 1223-25 (9th Cir. 1984); *Stewart* v. *KHD Deutz of Am., Corp.*, 980 F.2d 698, 702-04 (11th Cir. 1993).

These courts allow plaintiffs to introduce extrinsic evidence whenever the collective bargaining agreement does not unambiguously state whether or not the health-care benefits are vested. The primary difference between this approach and that employed by the Second and Seventh Circuits is that these courts have no category for agreements that are silent as to vesting. Either the agreements are unambiguous, in which case they control, or they are ambiguous, in which case extrinsic evidence is admissible. See, *e.g.*, *United Paperworkers Int'l Union* v. *Champion Int'l Corp.*, 908 F.2d 1252 (5th Cir. 1990) (remanding for consideration of extrinsic evidence where "the agreement itself [did] not speak to this issue"); *Bower*, 725 F.2d at 1223-24 (same). In other words, these courts give plaintiffs the opportunity to introduce extrinsic evidence, and thus the opportunity ultimately to prevail on the merits, *even when the collective bargaining agreement contains no language regarding vesting*.[3]

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[3] The three approaches outlined above are of course not the only possible ones. *See Bidlack*, 993 F.2d at 610-14 (Cudahy, J., concurring in the judgment) (outlining six possible approaches and arguing for a presumption of vesting where the collective bargaining agreement is silent).

This approach is in substantial tension with *Litton*, which indicated that all collectively-bargained obligations presumptively conclude with the expiration of the agreement. It also ignores the reality that parties to a collective bargaining agreement simply do not address liabilities of this magnitude by inference. But more to the point for this Court's purpose here, this approach is utterly irreconcilable with the other two approaches described above.

### B. The Courts Of Appeals Disagree As To Whether The Same Standard Applies To Both Collective Bargaining Agreements And ERISA Plans.

The fragmentation of the circuits is further exacerbated by their differing positions as to whether the standard that governs interpretation of collective bargaining agreements in suits brought under Section 301 and ERISA is the same as the standard that governs in suits that only involve the interpretation of ERISA plan documents. The Third and Seventh Circuits have expressly refused to draw any distinction between the two types of cases. See *Skinner Engine*, 188 F.3d at 139 (stating that the same principles apply "without regard as to whether the employee welfare benefits are provided under a collective bargaining agreement, SPD [a summary description of an ERISA plan], or other plan document"); *Rossetto*, 217 F.3d at 544 ("The distinction between collective bargaining agreements and ERISA plans is not recognized in our cases, and we are not minded to embrace it now and make the law even more complicated than it is."). The Second Circuit applies the same standard in both kinds of cases. See *Joyce*, 171 F.3d at 134 (Section 301 case); *Abbruscato* v. *Empire Blue Cross & Blue Shield*, 274 F.3d 90, 97 (2d Cir. 2001) (ERISA case).

The Fourth and Sixth Circuits, by contrast, have specifically held that a clear statement rule applies in ERISA cases, but not in Section 301 cases. See *Trull*, 2006 WL 1130926, at *2; *Int'l Union, United Auto. Workers of Am.* v. *BVR Liquidating, Inc.*, 190 F.3d 768, 772-73 (6th Cir. 1999).

Likewise, the Fifth Circuit's cases adhere to this approach. See *Wise*, 986 F.2d at 937 (applying a clear statement rule in an ERISA case); *United Paperworkers*, 908 F.2d at 1257 (not applying a clear statement rule in a Section 301 case). The First Circuit has recognized that there is a conflict as to "whether the same interpretive model should be used in both the ERISA context and the LMRA context," *Senior*, 449 F.3d at 217 n.18, but has not yet taken a position on the issue.

Notably, the reason the Sixth Circuit has given for refusing to apply its ERISA clear statement rule in suits brought under Section 301 is that the much-debated "*Yard-Man* inference" applies in Section 301 suits but not in ERISA suits. See *BVR Liquidating*, 190 F.3d at 772-73 (refusing to apply the ERISA clear statement rule in a Section 301 suit because "[t]he *Yard-Man* presumption was specifically intended to apply in the context of a collective bargaining agreement"). In *International Union, United Automobile Workers of America* v. *Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), the Sixth Circuit held that there is an "inference" that collectively-bargained retiree health-care benefits are vested. This is so, the court reasoned, because "it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations," and because "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained." *Id.* at 1482.

This so-called "*Yard-Man* inference" has proven controversial.[4] Some courts have construed *Yard-Man* as

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[4] *See, e.g., Skinner Engine*, 188 F.3d at 140 ("We cannot agree with *Yard-Man* and its progeny that there exists a presumption of lifetime benefits in the context of employee welfare benefits."); *United Paperworkers*, 908 F.2d at 1261 n.12 ("[W]e . . . find no basis in logic or federal labor policy for such a broad inference."); *Anderson*, 836 F.2d at 1517 ("[W]e disagree with *Yard-Man* to the extent that it recognizes an inference of an intent to vest . . . . We believe that it is not at all

establishing a presumption in favor of vesting. See, *e.g.*, *Skinner Engine*, 188 F.3d at 140; *Rossetto*, 217 F.3d at 543. This is perhaps understandable, given that the Sixth Circuit has itself referred to "the *Yard-Man* presumption." See *BVR Liquidating*, 190 F.3d at 772-73. In other cases, however, the Sixth Circuit has emphasized that *Yard-Man* does not create a presumption, *Int'l Union, United Auto. Workers of Am.* v. *Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir. 1984), and that it "does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest," *Golden*, 73 F.3d at 656.

Despite the Sixth Circuit's attempts to downplay the influence of the *Yard-Man* inference, it is clear that it is now deeply embedded in the structure of the law governing Section 301 cases, and continues to have a significant – often outcome-dispositive – impact on Section 301 suits in the Sixth Circuit. See *Skinner Engine*, 188 F.3d at 140 (noting that "[t]he [*Yard-Man*] inference exerts a fair amount of influence in how these types of cases are resolved").[5] This

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inconsistent with labor policy to require plaintiffs to prove their case without the aid of gratuitous inferences.").

[5] The *Yard-Man* inference clearly puts a thumb on the scales in favor of the retirees. Indeed, of the eleven Section 301 cases that have produced published opinions in the Sixth Circuit since *Yard-Man*, the court has found that the retirees' benefits were vested or likely to be vested in all eleven cases. *See* Pet. App. 1a-38a (likely to be vested); *McCoy* v. *Meridian Auto. Sys., Inc.*, 390 F.3d 417 (6th Cir. 2004) (likely to be vested); *Maurer* v. *Joy Techs., Inc.*, 212 F.3d 907 (6th Cir. 2000) (vested); *BVR Liquidating*, 190 F.3d 768 (vested); *Golden*, 73 F.3d 648 (likely to be vested); *Armistead* v. *Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991) (vested); *Smith* v. *ABS Indus., Inc.*, 890 F.2d 841 (6th Cir. 1989) (vested); *Weimer* v. *Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985) (vested); *Policy* v. *Powell Pressed Steel Co.*, 770 F.2d 609 (6th Cir. 1985) (vested); *Cadillac*, 728 F.2d 807 (vested); *Yard-Man*, 716 F.2d 1476 (vested).

The Sixth Circuit's record contrasts sharply with that of the Seventh Circuit, which has found the benefits to be vested only once in ten cases.

influence arises in part from the fact that the *Yard-Man* inference eliminates the presumption of non-vesting that the Sixth Circuit would otherwise apply in the absence of clear and express vesting language. The Sixth Circuit has explained that it does not require clear and express vesting language in Section 301 suits, as it does in ERISA suits, because the *Yard-Man* inference – in particular, the inference that the parties would not have left retirement benefits to future contingencies – arises only when the insurance plan is collectively-bargained, and not when it is imposed unilaterally by the employer. *See BVR Liquidating*, 190 F.3d at 772-73; *Maurer* v. *Joy Techs., Inc.*, 212 F.3d 907, 917 (6th Cir. 2000).

As *Litton* suggests and Judge Posner has correctly observed, however, the collective bargaining context cuts in the opposite direction, counseling in favor of a clear statement rule in Section 301 cases and not in ERISA cases:

> It can be argued that a reversal of these presumptions would make better sense – that if the union negotiated for [lifetime health-care benefits], they would surely appear in the collective bargaining agreement, whereas an employee ought to get the benefit of vague language in his ERISA plan.

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*See Barnett* v. *Ameren Corp.*, 436 F.3d 830 (7th Cir. 2006) (not vested); *Cherry*, 441 F.3d 476 (not vested); *Int'l Union, United Auto. Workers of Am.* v. *Rockford Powertrain, Inc.*, 350 F.3d 698 (7th Cir. 2003) (not vested); *Rossetto*, 217 F.3d 539 (remand for trial); *Pabst Brewing Co.* v. *Corrao*, 161 F.3d 434 (7th Cir. 1998) (not vested); *Diehl* v. *Twin Disc., Inc.*, 102 F.3d 301 (7th Cir. 1996) (vested); *Murphy* v. *Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995) (not vested); *Bidlack*, 993 F.2d 603 (remand for trial); *Senn* v. *United Dominion Indus.*, 951 F.2d 806 (7th Cir. 1992) (not vested); *Ryan* v. *Chromalloy Am. Corp.*, 877 F.2d 598 (7th Cir. 1989) (not vested). This is precisely the kind of inter-circuit inconsistency that cries out for resolution by this Court.

*Rossetto*, 217 F.3d at 543-44. The Sixth Circuit's approach is thus plainly incorrect and in conflict with that taken by several other courts of appeals.

### C. The Conflict In The Circuits As To The Proper Standard Is Outcome-Determinative In Many Cases, Including The Present One.

As should be clear from the foregoing, the federal courts are in complete, entrenched disarray with respect to the standard that applies when determining whether collectively-bargained retiree health-care benefits are vested. The debate is not merely academic. The outcome of a given case usually depends on the approach the court takes. See Jeffrey S. Klein & Nicholas J. Pappas, *Recent Developments in Retiree Health Benefits Litigation*, N.Y.L.J., June 5, 2006, at 3 ("The past 23 years of litigation following the decision in the Yard-Man case reflect that the outcome of a particular case involving whether or not retiree medical benefits are vested depends not only on the facts . . . but also on the governing judicial precedent in the jurisdiction where the case is filed.").

The present case is no exception. Even if the Sixth Circuit chose not to accept El Paso's contention that the durational clause demonstrates that the benefits are not vested, the most that could possibly be said about the collective bargaining agreement here is that it is *silent* with respect to vesting. There is simply no other language in the agreement that remotely addresses the issue whether the benefits were intended to be vested for life, let alone does so expressly or clearly.[6] Thus, the benefits would have been presumed *not* to

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[6] The only language that the courts below identified that even arguably addresses the question of vesting is the language linking retiree health-care benefits to retiree pension benefits. *See* Pet. App. 41a-42a (referencing the language in the group insurance plan that provides that employees retiring under JI Case's "'Pension Plan for Hourly Paid Employees'" or "'their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan'" are eligible for health-care

vest under the first approach outlined above. Similarly, the benefits would have been presumed *not* to vest under the second approach outlined above because the agreement is silent as to vesting, *i.e.*, there is no language that is "reasonably susceptible to interpretation as a promise" to provide lifetime health-care benefits. Accordingly, El Paso would have prevailed as a matter of law had respondents brought this case in the Second, Third, or Seventh Circuit instead of the Sixth.

### D. This Case Implicates Three Subsidiary Conflicts As To The Interpretation Of Identical Language In Collective Bargaining Agreements.

This case also implicates related and recurring conflicts among the circuits on the interpretation of collective bargaining agreements providing retiree health-care benefits. Specifically, the circuits are in disagreement about the effect of (i) language that indicates that benefits will continue in retirement, (ii) language that provides health-care benefits to

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benefits). However, as other courts have recognized, such "packaging" simply does not speak to whether the health-care benefits are vested. *See infra* at 19-20. After all, it is virtually inevitable that the persons described as eligible for health-care benefits in retirement will also be persons who are eligible for pensions. But that does not imply that health-care benefits will vest in lockstep with pension benefits, which are subject to statutory vesting requirements.

The courts below also relied upon a negative inference from the inclusion of specific time limitations on lay-off and maternity-leave benefits. These durational provisions clearly do not speak to whether the retirees' health-care benefits are vested. The durational limitations on lay-off and maternity-leave benefits are limits that apply *under the plan*. That is, these time limits operate to cut off benefits beyond a certain point even though the plan remains in effect (it is reasonable for the parties to want to terminate the benefits of absent active employees before the end of the full contract term); *these time limits say nothing about whether and for how long lay-off and maternity-leave benefits must be provided if the plan is cancelled*. *See* JA 1536-37 (relevant plan provisions). Thus, no inference can be drawn about whether the company agreed to provide other types of benefits for life regardless of the expiration of the plan.

those entitled to vested pension benefits, and (iii) language that specifies the duration of the insurance agreement. Like the conflict as to the general standard governing interpretation of collective bargaining agreements, these interpretive conflicts are often outcome-determinative – that is, the effect given to the relevant language decides or significantly affects whether retiree health-care benefits are vested for life.

First, many collective bargaining agreements, including the agreement at issue here, have provisions stating that benefits "will continue" or "shall be provided" in retirement, without any durational limitation. Some courts have held that such language unambiguously vests the benefits. See *BVR Liquidating*, 190 F.3d at 773-74. Others disagree, holding that it does not unambiguously vest the benefits. See *Skinner Engine*, 188 F.3d at 141. Some courts have held that such language creates an ambiguity as to vesting, necessitating resort to extrinsic evidence. See *Stewart*, 980 F.2d at 702-04. Others disagree, holding that it does not create an ambiguity, but is instead presumed to mean that the benefits "will continue" *only until the collective bargaining agreement expires*. See *Senn* v. *United Dominion Indus., Inc.*, 951 F.2d 806, 814-15 (7th Cir. 1992). Thus, contrary to the positions taken by the Sixth and Eleventh Circuits, the Third and Seventh Circuits properly hold that where, as here, the collective bargaining agreement contains language stating that benefits will be provided in retirement, but does not specify that the benefits are vested for life, the employer is entitled to prevail as a matter of law.

Second, in concluding that the agreements displayed an intent to vest the retirees' health-care benefits, both the district court and the court of appeals placed great emphasis on the language linking retirees' eligibility for health-care benefits to their eligibility for pension benefits. See Pet. App. 13a, 17a, 21a, 53a. This is consistent with Sixth Circuit case law, which treats language providing health-care benefits to retirees with pension benefits as vesting the health-care

benefits, at least in Section 301 suits.[7] See *Golden*, 73 F.3d at 656 (citing approvingly the district court's conclusion that the tying of health-care benefits to pension benefits indicates that the health-care benefits are vested); *McCoy* v. *Meridian Auto. Sys., Inc.*, 390 F.3d 417, 422 (6th Cir. 2004) ("Because the Supplemental Agreement ties eligibility for retirement-health benefits to eligibility for a pension . . . there is little room for debate that the retirees' health benefits vested upon retirement under *Golden*.").

In stark conflict with the Sixth Circuit, the Second and Seventh Circuits *reject* any argument that language tying health-care benefits to pension benefits vests the health-care benefits, perhaps recognizing that pension and retiree health-care benefits are often mentioned together simply because they both implicate the status of retirement and that health-care benefits, unlike pension benefits, are not subject to a mandatory statutory vesting requirement. Indeed, these courts do not view such language as sufficient even to create an ambiguity that would overcome the presumption against vesting where the agreement is silent. See *Joyce*, 171 F.3d at 134 (concluding that statements tying retiree health-care benefits to pension benefits "cannot reasonably be read as binding [the employer] to vest the benefits at issue"); *Vallone* v. *CAN Fin. Corp.*, 375 F.3d 623, 633 n.4 (7th Cir.) ("[T]he packaging of a welfare benefit [such as retiree health-care benefits] with pension benefits does not on its own alter our presumption against vesting . . . ."), *cert. denied*, 543 U.S. 1021 (2004).

Third, despite *Litton*, the court of appeals rejected El Paso's argument that the clause specifically limiting the duration of

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[7] Notably, in pure ERISA cases, the Sixth Circuit holds that such language is insufficient to vest benefits or even to create an ambiguity as to vesting. *See Sengpiel* v. *B.F. Goodrich Co.*, 156 F.3d 660, 668 (6th Cir. 1998) (concluding that language tying retirement health benefits to pension benefits "neither expressly guarantees lifetime benefits nor creates an ambiguity as to whether such benefits are vested").

the insurance agreement to the term of the collective bargaining agreement establishes that the benefits are not vested. See Pet. App. 13a-15a, 54a-55a. This holding is an expansion of the Sixth Circuit rule, announced in *Yard-Man*, that an intent to terminate benefits cannot be inferred from a general durational clause, *i.e., a clause that limits the duration of the collective bargaining agreement but does not specifically refer to the duration of insurance benefits.* See *Yard-Man*, 716 F.2d at 1482. This new rule squarely conflicts with the rule in other circuits. The Eighth Circuit, confronted with an identical argument, concluded that the "durational clauses in the [insurance agreements] show an intent to limit benefits to the duration of the agreement." *Anderson*, 836 F.2d at 1519. Indeed, the court reasoned that "[i]t would render the durational clauses nugatory to hold that benefits continue for life even though the agreement which provides the benefits expires on a certain date." *Id.* Thus, in addition to the Second, Third, and Seventh Circuits, it appears that El Paso would have prevailed in the Eighth Circuit as well.

In sum, the courts of appeals have taken widely varying approaches to the question of how to determine whether retiree health-care benefits granted by a collective bargaining agreement are vested. The various standards adopted by the courts of appeals on this issue are inconsistent and outcome-determinative in many cases, including the present one. A number of circuits are following an approach to this critically important question that, in petitioner's view, is incorrect and damaging. The lower courts are sorely in need of guidance on this issue, and review by this Court is warranted to end the conflict, reconcile the fragmented interpretive standards now applied in the circuits and mandate use of a correct standard.

## II. THE ISSUE IS RECURRING AND IMPORTANT.

There can be no doubt that the question presented in this petition is recurring. Since the Sixth Circuit decided *Yard-Man* in 1983, the federal courts of appeals have been called

upon to determine whether collectively-bargained retiree health-care benefits are vested on no fewer than 40 occasions.[8] Five such appeals have arisen within the last year alone. See *Senior*, 449 F.3d 206; *Trull*, 2006 WL 1130926 (unpublished); Pet. App. 1a-38a; *Cherry*, 441 F.3d 476; *Barnett*, 436 F.3d 830. In short, for more than 20 years the federal courts have confronted a steady stream of litigation over retiree health-care benefits, and there is no indication that this stream will abate any time in the near future. The question is too important to too many for it simply to disappear.

Equally to the point, the petition presents a critically important question of federal law. The issue has nationwide ramifications, and the stakes are high on both sides. On one

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[8] *See Senior*, 449 F.3d 206; *Trull*, 2006 WL 1130926 (unpublished); Pet. App. 1a-38a; *Cherry*, 441 F.3d 476; *Barnett*, 436 F.3d 830; *McCoy*, 390 F.3d 417; *Rockford Powertrain*, 350 F.3d 698; *Maurer*, 212 F.3d 907; *Rossetto*, 217 F.3d 539; *Joyce*, 171 F.3d 130; *Skinner Engine*, 188 F.3d 130; *BVR Liquidating*, 190 F.3d 768; *Pabst Brewing Co.*, 161 F.3d 434; *Grain Millers*, 116 F.3d 976; *Masonite*, 122 F.3d 228; *Golden*, 73 F.3d 648; *Diehl*, 102 F.3d 301; *Murphy*, 61 F.3d 560; *John Morrell & Co.* v. *United Food & Comm. Workers Int'l Union*, 37 F.3d 1302 (8th Cir. 1994); *Bidlack*, 993 F.2d 603; *Stewart*, 980 F.2d 698; *Senn*, 951 F.2d 806; *In re Chateaugay Corp.*, 945 F.2d 1205 (2d Cir. 1991); *Armistead*, 944 F.2d 1287; *United Paperworkers*, 908 F.2d 1252; *Keffer* v. *H.K. Porter Co.*, 872 F.2d 60 (4th Cir. 1989); *Smith*, 890 F.2d 841; *Ryan*, 877 F.2d 598; *Anderson*, 836 F.2d 1512; *Bazzone* v. *Auto. Indus. Welfare Fund*, 860 F.2d 1088 (9th Cir. 1988) (unpublished), *available at* 1988 WL 58340; *United Steelworkers of Am.* v. *Connors Steel Co.*, 855 F.2d 1499 (11th Cir. 1988); *United Steelworkers of Am.* v. *Textron, Inc.*, 836 F.2d 6 (1st Cir. 1987); *Dist. 29, UMW* v. *UMW 1974 Benefit Plan & Trust*, 826 F.2d 280 (4th Cir. 1987); *Dist. 29, UMW* v. *Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985); *Weimer*, 773 F.2d 669; *Policy*, 770 F.2d 609; *United Food & Comm. Workers Int'l Union* v. *Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985); *Cadillac Malleable Iron Co.*, 728 F.2d 807; *Bower*, 725 F.2d 1221; *Yard-Man*, 716 F.2d 1476. This count does not include the many retiree health-care benefits cases in which suit was brought solely under ERISA because the benefits were provided by an ERISA plan rather than a collective bargaining agreement.

hand, employers face exposure to potentially crushing liabilities for health-care costs that they contend they never agreed to pay. In this case alone, El Paso informed the court that it would incur liability of $1.8 million *per month*. See Pet. App. 70a. Cf. *UAW* v. *Gen. Motors Corp.*, No. 05-CV-7399-DT, 2006 WL 891151, at *3 (E.D. Mich. Mar. 3, 2006) (finding that General Motors' projected liability for retiree health benefits in 2004 was $61 billion). On the other hand, retirees find themselves unexpectedly responsible for a portion of the crucial health-care benefits that they believe they bargained for, and are entitled to receive, for the rest of their lives. This issue is among the most important and pressing questions of federal labor law, and it merits this Court's attention.

Moreover, the persistence of the conflict among the courts of appeals creates an intolerable situation contrary to Congress's express intentions in enacting Section 301 of the LMRA. Specifically, the conflict with respect to the question presented in this petition undermines the uniformity Congress sought to achieve by enacting Section 301. Section 301, which gives federal courts exclusive jurisdiction over suits for violations of collective bargaining agreements, stands as a "congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 209 (1985). Congress intended the federal courts to use the jurisdiction and law-making power granted by Section 301 to ensure that collective bargaining agreements are given a *uniform* interpretation throughout the nation, thereby promoting stability and predictability in labor markets. See *id.* at 211 ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation."). This Court has specifically instructed that "the subject matter of § 301(a) is peculiarly

one that calls for uniform law" and that "in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962) (internal quotation marks and citations omitted). Accordingly, the conflicts described herein are plainly inconsistent with Congress's policy of uniformity in the interpretation of collective bargaining agreements.

In addition, the lack of uniformity is fundamentally unfair for employers, unions, and retirees. Clearly, substantively identical collective bargaining agreements should not be interpreted differently because the employer is sued in Philadelphia or Chicago, rather than Detroit. The existence of these starkly different legal regimes is particularly intolerable for the many employers and unions that negotiate and administer nationwide agreements that cover employees throughout the country or different contracts containing standard provisions in various sections of the country. If the conflicts described above are allowed to continue, a given contractual provision might be found to have created lifetime benefits in some circuits but not in others. See *Bidlack*, 993 F.2d at 620 (Easterbrook, J., dissenting) ("Employers with national operations are subject to multiple and inconsistent rules, compounded by the uncertainty inherent in sending big-stakes questions to the constantly-changing panels that are juries."). Employees of the same company could receive different treatment based solely on geography. Employers that negotiate the same contract language would be differently situated with respect to this significant cost.

Finally, the conflict in the circuits inevitably exacerbates the evil of forum shopping. This case provides an excellent example. By November 1993, petitioner's plants were located in Iowa, Illinois, Wisconsin, and Minnesota, states in the Seventh and Eighth Circuits. See JA 869. This proposed class action, involving approximately 3700 retirees and their surviving spouses, was brought by retirees living in Michigan

and Tennessee to gain the benefit of the Sixth Circuit's favorable law. That choice represents a legitimate strategic judgment by counsel, but demonstrates how the current state of the law does serious violence to Congress's goal of a uniform federal law in this area.

This Court's attention is urgently required to end this deep and persistent conflict, and announce a uniform federal legal standard.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 4, 2006

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# APPENDIX

**APPENDIX A**

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

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Nos. 04-1182, 04-1818, 04-1821, 04-2492

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GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTED, on behalf of themselves and a similarly situated class, *Plaintiffs-Appellees*, (04-1821/2492)

v.

EL PASO TENNESSEE PIPELINE CO., *Defendant-Appellant*,

CASE CORPORATION, now known as CNH AMERICA, LLC, *Defendant-Appellant*. (04-1182/1818)

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Argued: Dec. 6, 2005.
Decided and Filed: Jan. 17, 2006.

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Before: MARTIN, COLE, and GILMAN, *Circuit Judges*.

OPINION

BOYCE F. MARTIN, JR., *Circuit Judge*.

The plaintiffs in these four consolidated appeals are retirees or surviving spouses of the J.I. Case Company or the Case Corporation, and they seek fully funded lifetime retiree health care benefits from the defendants. The district court found that the plaintiffs demonstrated a likelihood of success on the merits and entered a preliminary injunction requiring the continued payment of the health care benefits. In three of the consolidated appeals, the underlying issue is whether the retirement health care benefits vested for life. We conclude

that the district court did not abuse its discretion in determining that the plaintiffs are likely to succeed on their claim that their health care benefits are fully vested for life. So concluding, we turn to the question presented in the fourth consolidated appeal, and hold that the district court correctly determined that the contract between El Paso and CNH America unambiguously allocates the full cost of those benefits to El Paso. We therefore AFFIRM the district court's judgment in all respects.

I.

In their complaint, the plaintiffs alleged two counts against the defendants: (1) breach of labor agreements in violation of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185,[1] by requiring the plaintiffs to contribute premiums to maintain their retiree or surviving spouse health care benefits, and (2) breach of fiduciary duties under the various labor agreements which constitute employee welfare plans within the meaning of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*

The defendants are El Paso Tennessee Pipeline Company and CNH America, LLC. JI Case, not a party to the dispute, was established in 1842 and became a wholly owned subsidiary of Tenneco (now El Paso) in 1970. JI Case remained a wholly owned subsidiary of Tenneco until 1994 when Tenneco underwent a reorganization and decided to spin off its own and JI Case's agriculture and construction business assets. Tenneco therefore formed a new corporation, Case

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[1] Section 301(a) states that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

Equipment Corporation, and pursuant to a Reorganization Agreement, transferred these assets to Case Equipment. Included was all of the JI Case business (defined as the farm and construction equipment business of Tenneco) except for Tenneco's JI Case stock, certain demand notes and subordinated debt, as well as the Retained Assets and Retained Liabilities. Case Equipment was then spun off on July 1, 1994, in an initial public offering of its shares. Case Equipment then changed its name to Case Corporation, then to Case, LLC, and is now known as CNH America.[2] In 1996, Tenneco merged with a subsidiary of El Paso Natural Gas Company and is now known as El Paso Tennessee Pipeline Company.

The International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW) represented JI Case employees in collective bargaining. Over the years, UAW and JI Case negotiated a number of collective bargaining agreements (CBAs). UAW and JI Case also negotiated a series of Group Insurance Plans which addressed group insurance benefits for various categories of employees and former employees. The CBAs between UAW and JI Case from 1971 forward contain the following language in Section 4A with respect to the Group Insurance Plans: "The group insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made a part of this Agreement." In Section 4C the CBA states: "The pension plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement." In 1974, JI Case agreed to pay the full cost of health care benefits for retirees and eligible surviving spouses regardless of age. Under the section "Contribution for Coverage," the plan states that "the Company shall pay the full premium cost of the above coverages." The language of

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[2] For ease of discussion, at times the opinion will refer to CNH America by its previous names.

the Group Insurance Plans remained substantially unchanged through 1990.

Over the years, Metropolitan Life Insurance Company prepared benefit booklets describing insurance benefits provided under the Group Policy contracts between JI Case and Metropolitan. These booklets included language that "it is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, subject to the applicable provisions of the Labor Agreement [CBAs], to terminate or change the Plan in the future."

The 1990 Agreement is the CBA under which the plaintiffs retired. The 1990 CBA was effective from June 2, 1990 through October 2, 1993. On November 5, 1993, however, JI Case and UAW entered into an Extension Agreement that extended the 1990 CBA through February 2, 1995. In Section 9 of the Extension Agreement, JI Case and UAW agreed to adopt, effective on October 3, 1993, a Letter of Agreement ("the FAS-106 Letter") that appears to cap JI Case's liability for certain health care benefits. The Letter states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

The parties dispute the effect of this letter.[3]

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[3] The defendants contend that JI Case and UAW intended the Letter to be a "cost sharing agreement" between JI Case and its retirees whereby JI Case's obligations for retiree and surviving spouse health care benefits would be limited, effective April 1, 1998. The plaintiffs, on the other hand, contend that the parties intended the Letter to serve only as an

On June 23, 1994, pursuant to Tenneco's transfer of its and Case's farm and construction equipment assets to Case Equipment, Tenneco, JI Case, and Case Equipment signed a number of agreements, including a Reorganization Agreement and an Employee Benefits and Compensation Allocation Agreement. As part of the agreement, Tenneco assumed "Retained Liabilities" and agreed to "pay, perform and discharge in due course all of the Retained Liabilities." The agreement defines "Retained Liabilities" as: "[T]he Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date [June 23, 1994]) of retirees of the Case Business in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the benefits agreement." Tenneco further agreed to indemnify Case Equipment "from and against any and all Liabilities, and any claims, demands and rights of the [Case Equipment] Indemnitees arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco subsidiary to pay . . . any of the Retained Liabilities . . ."

Section 7.2.2 of the agreement further provides that Tenneco will "retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date for United States employees retired prior to the Closing Date and their Dependants." Section 7.4 provides a limitation on Tenneco's responsibility:

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result from any action of [Case Equipment] after the Closing Date which increases such benefits, except to the extent that such

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accommodation for accounting purposes under FAS-106, whereby UAW agreed to allow JI Case to temporarily reduce the FAS-106 accounting figure that it reported on its financial records.

> benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case Equipment] shall be liable. Without limiting the generality of the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case Equipment] to increase or otherwise modify the per capita annual cost limits set forth in [the FAS-106 Letter].

Case LLC assumed the existing CBAs between JI Case and the UAW.

After the Reorganization, Case LLC continued to operate the same farm and construction business that JI Case had under the same management, at the same locations, with the same equipment, with the same supervision, producing the same products, with the same employees, working under the same CBAs. Tenneco then began paying the full cost of the plaintiffs's health care benefits in 1994. In November 1996 Tenneco sent a letter to its retirees advising them of its impending merger with El Paso and advising those individuals who retired from JI Case that their health care benefits would be maintained by El Paso after the merger. On October 27, 1997, El Paso sent a letter to the plaintiffs informing them that they would be required to contribute $56 per month for health care coverage as of April 1, 1998. El Paso based this requirement on the FAS-106 Letter.

In the meantime and as part of negotiations for a new CBA, UAW asked Case LLC to pay the $56 per month contribution that El Paso sought from pre-IPO retirees for their health care coverage. Case LLC agreed to pay the contributions "as a show of good will toward the UAW," but insisted that it had no legal obligation to pay for the health care benefits. On October 1, 1998, Case LLC and the UAW entered into the Voluntary Employee Beneficiary Association Agreement whereby both Case LLC and UAW agreed "to make deposits

of specified amounts in trust to be applied to defray partially the cost of medical benefits in excess of the Cap under El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . ."

Case LLC then informed pre-IPO retirees and surviving spouses that it would pay their $56 per month premium through the end of 1998. In the summer of 2002, the funds contributed by UAW and Case LLC were exhausted. UAW asked Case LLC and El Paso to make additional contributions to fund the above-cap health care insurance costs for pre-IPO retirees; they both refused. In August 2002, El Paso sent a letter to pre-IPO retirees informing them that they would need to contribute $290 per month in order to continue receiving retiree health care benefits. In December, El Paso sent another letter to the effect that premiums would increase to $501 per month as of January 2003. The plaintiffs filed this lawsuit on December 23, 2002. Subsequently, in October 2003, El Paso informed retirees that the monthly contribution would increase to $561 as of January 2004.

On December 31, 2003, the district court granted the plaintiffs's motion for a preliminary injunction, concluding that the plaintiffs were likely to succeed on their claim that CNH America was obligated to provide fully paid, lifetime health care benefits. *Yolton v. El Paso Tennessee Pipeline Co.*, 318 F.Supp.2d 455 (E.D.Mich.2003). The injunction was limited to those retirees who had retired before October 3, 1993 (the date of the FAS-106 Letter). *Id.* at 473. The district court further concluded that pursuant to the 1994 Reorganization, El Paso (as Tenneco's successor) had assumed CNH America's obligation to provide the benefits. *Id.* at 474-75. El Paso moved for reconsideration, arguing that it was premature to resolve the issue of the allocation of liability under the Reorganization Agreement. The district court granted El Paso's motion. On March 9, 2004, the district court concluded that CNH America, as the signatory

to the CBAs (via Case LLC), had a direct obligation to the retirees. Nevertheless, on September 3, 2004, the district court granted summary judgment to CNH America on its cross-claim against El Paso for indemnification under the Reorganization Agreement for *all* of CNH America's pre-Reorganization retiree health care benefit liabilities. These appeals followed the district court's orders.

II.

The first issue for our consideration is whether the district court abused its discretion when it concluded that the plaintiffs were likely to succeed on their claim that their retirement health care benefits are vested. We conclude that the district court did not abuse its discretion because the CBAs demonstrate an intent to vest the benefits. Because we conclude that the district court did not abuse its discretion when issuing the injunction, we must determine whether the district court erred in granting CNH America summary judgment on its cross-claim that El Paso is liable for the full cost of the plaintiffs's health care benefits. We conclude that the contract was unambiguous, and the district court correctly granted summary judgment in favor of CNH America.

III.

*A. The Standard of Review is Abuse of Discretion*

This Court reviews a district court's grant of a preliminary injunction for an abuse of discretion. *Tucker v. City of Fairfield*, 398 F.3d 457, 461 (6th Cir.2005). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, improperly applies the law, or uses an erroneous legal standard." *Id.* This Court reviews the district court's conclusions of law *de novo* and its findings of fact for clear error. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir.1996). "Questions of contract interpretation are generally considered questions of law subject to *de novo* review." *Id.*

To determine whether to grant a preliminary injunction, a district court must consider: "(1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir.2001). "None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them." *Golden*, 73 F.3d at 653.

*B. The district court did not abuse its discretion in this case.*

The district court considered each of the four factors listed above when issuing the preliminary injunction. The defendants primarily challenge the district court's findings on the first factor—that is, the court's determination that the plaintiffs are likely to succeed on the merits. The plaintiffs are likely to succeed on the merits if they can prove that they have a vested right to the insurance benefits they claim. "To prove this, the plaintiffs must show that the defendant and the union intended to include a right to lifetime benefits when they negotiated the CBAs at issue." *Golden*, 73 F.3d at 653.

A retiree health care insurance benefit plan is a welfare benefit plan under ERISA. *Maurer v. Joy Tech., Inc.*, 212 F.3d 907, 914 (6th Cir.2000) (citing *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir.1993)). Unlike pension plans, "[t]here is no statutory right to lifetime health benefits." *Golden*, 73 F.3d at 653.[4] If lifetime health

[4] ERISA provides for two types of employee benefit plans: pension plans and welfare benefit plans. 29 U.S.C. § 1002(1), (2)(A). Pension plans are subject to mandatory participation, vesting, and funding requirements. 29 U.S.C. § 1051. Welfare benefits are not subject to these requirements. *Id.* Retiree health insurance benefit plans are classified as welfare benefit plans under ERISA. 29 U.S.C. § 1002(1).

care benefits exist for the plaintiffs, it is because the UAW and the defendants agreed to vest a welfare benefit plan. *Id.* at 654; *see also Boyer*, 986 F.2d at 1005. If a welfare benefit has not vested, "after a CBA expires, an employer generally is free to modify or terminate any retiree medical benefits that the employer provided pursuant to that CBA." *Bittinger v. Tecumseh Prod. Co.*, 83 F.Supp.2d 851, 857 (E.D.Mich.1998) (quoting *Am. Fed'n of Grain Millers v. Int'l Multifoods*, 116 F.3d 976, 979 (2d Cir.1997)). If a welfare benefit has vested, the employer's unilateral modification or reduction of those benefits constitutes a LMRA violation. *Maurer*, 212 F.3d at 914.

The district court applied this Court's decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir.1983), to determine whether the parties intended for the retiree health insurance benefits to vest. *Yolton*, 318 F.Supp.2d at 465. *Yard-Man* recognized that parties to CBAs can agree to vest benefits that survive the termination of the agreement. *Yard-Man*, 716 F.2d at 1479. Whether the benefits vest depends upon the intent of the parties. *Golden*, 73 F.3d at 654. "Courts can find that rights have vested under a CBA even if the intent to vest has not been explicitly set out in the agreement." *Maurer v. Joy Technologies, Inc.*, 212 F.3d 907, 915 (6th Cir.2000). In *Golden*, the Court clarified that in determining the intent of the parties to a CBA, "basic rules of contract interpretation apply." *Golden*, 73 F.3d at 654. Thus, *Yard-Man* makes clear that courts "should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent." *Yard-Man*, 716 F.2d at 1479. Moreover, courts "should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties." *Id.* When ambiguities exist, courts may look to other provisions of the document and other extrinsic evidence. *Id.* at 1480; *see also Golden*, 73 F.3d at 654.

Part of the *Yard-Man* decision has generated controversy. Examining the context of the CBA negotiations, the Court wrote that "it is unlikely that [life and health insurance benefits], which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." *Yard-Man*, 716 F.2d at 1482. Thus, "retiree benefits are in a sense 'status' benefits which, as such, carry with them an *inference* that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree." *Id.* (emphasis added). This inference has caused much consternation for employers despite the remainder of the Court's opinion:

> This is not to say that retiree insurance benefits are necessarily interminable by their nature. Nor does any federal labor policy . . . presumptively favor the finding of interminable rights to retiree insurance benefits when the collective bargaining agreement is silent. Rather, as part of the context from which the collective bargaining agreement arose, the nature of such benefits simply provides another inference of intent. *Standing alone, this factor would be insufficient to find an intent to create interminable benefits.* In the present case, however, this contextual factor buttresses *the already sufficient evidence of such intent* in the language of the agreement itself.

*Id.* (emphasis added). Later cases further clarified the inference. Shortly after *Yard-Man*, this Court stated that "there is no legal presumption based on the status of retired employees." *Int'l Union, United Auto. Workers v. Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir.1984). Moreover, "*Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and

the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBAs." *Golden*, 73 F.3d at 656.

Both El Paso and CNH America devote a great deal of energy to disputing the correctness of the *Yard-Man* inference. El Paso even suggests that this panel should overrule *Yard-Man*.[5] Aside from a panel's lack of authority to do so, these concerns are significantly overstated. El Paso and CNH America misinterpret the term "inference" and confuse it with a legal presumption. Under *Yard-Man* we may *infer* an intent to vest from the context and already sufficient evidence of such intent. Absent such other evidence, we do not start our analysis presuming anything. If *Yard-Man* required a *presumption,* the burden of rebutting that presumption would fall on the defendants. However, under *Yard-Man,* "[t]here is no legal presumption that benefits vest and that the burden of proof rests on plaintiffs." *Maurer,* 212 F.3d at 917. This Court has never inferred an intent to vest benefits in the absence of either explicit contractual language or extrinsic evidence indicating such an intent. Rather, the inference functions more to provide a contextual understanding about the nature of labor-management negotiations over retirement benefits. That is, because retirement health care benefits are not mandatory or required to be included in an agreement, and because they are "typically understood as a form of delayed compensation or reward for past services" it is unlikely that they would be "left to the contingencies of future negotiations." *Yard-Man,* 716 F.2d at 1481-82 (citations omitted). When other contextual factors so indicate,

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[5] The defendants also advance the argument that this Court already overruled *Yard-Man* in *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir.1998) (en banc). Prior panels have already addressed and explicitly rejected this argument. *Maurer*, 212 F.3d at 917 (rejecting claim that *Sprague* overruled *Yard-Man* and further rejecting the claim that explicit vesting language is necessary for welfare benefits to vest).

*Yard-Man* simply provides another inference of intent. All that *Yard-Man* and subsequent cases instruct is that the Court should apply ordinary principles of contract interpretation. There is no need to revise, reconsider, or overrule *Yard-Man*.

Furthermore, there is no indication that the district court applied either a presumption or relied unnecessarily on the *Yard-Man* inference. Citing *Yard-Man*, the district court correctly stated that "courts must apply basic rules of contract interpretation to discern the intent of the parties." *Yolton*, 318 F.Supp.2d at 465. The district court did mention the inference and noted that Sixth Circuit case law has not repudiated the *Yard-Man* language, but the court's analysis does not in any sense *rely* on an inference. *Id.* at 465-68. Instead, the district court interpreted the language of the agreement and found evidence that the defendants intended to confer lifetime benefits upon the plaintiffs. *Id.* at 466. Of particular significance to the district court was language in the Group Insurance Plan that tied benefits to the pension plans—that is, the Group Insurance Plan provided that employees retiring under the pension plan are eligible for the lifetime health care insurance. *Id.* Because the pension plan is a lifetime plan and the health insurance benefits are tied to the pension plan, the district court found that the health insurance benefits were vested and intended to be lifetime benefits. *Id.* at 466-67. This language is similar to *Golden*, where the district court's key finding was the provisions in each of the CBAs that tied retiree benefits and surviving spouse eligibility for health insurance coverage to eligibility for vested pension benefits. "Since retirees are eligible to receive pension benefits for life, the court found that the parties intended that the company provide lifetime health benefits as well." *Golden*, 73 F.3d at 656.

The defendants counter this finding by pointing to the durational clause in the CBA, which states in section 4A that the insurance plan "will run concurrently with [the CBA] and

is hereby made part of this Agreement." The defendants argue that this is clear and explicit language that demonstrates that the health insurance benefits were not intended to vest and were only to last as long as the CBA. Thus, every time a CBA expires, the company would be free to modify benefits until another CBA is agreed to. Stated another way, retiree's health insurance coverage is subject to change every few years based on new bargaining agreements.

The district court did not abuse its discretion in rejecting the defendants's arguments for two reasons. First, as the district court found, "a number of courts have held that such general durational provisions only refer to the length of the [CBAs] and not the period of time contemplated for retiree benefits." *Yolton*, 318 F.Supp.2d at 467 (citing *Golden v. Kelsey-Hayes Co.*, 845 F.Supp. 410 (E.D.Mich.1994)). Absent specific durational language referring to retiree benefits themselves, courts have held that the general durational language says nothing about those retiree benefits. *Id.; see also Yard-Man,* 716 F.2d at 1482; *Schalk v. Teledyne, Inc.*, 751 F.Supp. 1261, 1265 (W.D.Mich.1990), *aff'd* 948 F.2d 1290 (6th Cir.1991) ("the existence of a general durational clause which provide[s] that the collective bargaining agreement should remain in effect until a certain date d[oes] not demonstrate an intent that all benefits described in the agreement also terminate[ ] on that date.").

That reasoning as applied to the agreements before us means that the concurrent language does nothing to those employees who have already retired under the plan. The durational language only affects *future* retirees—that is, someone who retired after the expiration of a particular CBA would not be entitled to the previous benefits, but is rather entitled only to those benefits newly negotiated under a new CBA. Thus, the retirement package available to someone contemplating retirement will change with the expiration and adoption of CBAs, but someone already retired under a

particular CBA continues to receive the benefits provided therein despite the expiration of the agreement itself.[6]

Second, section 4C of the CBA states that "The pension plan agreed to between the parties will run concurrently with this agreement and is hereby made part of this Agreement." The plaintiffs point to this language as strongly supporting their argument that the retirement benefits are vested. This is because pension benefits are vested benefits. There is no suggestion that a retiree's pension plan is subject to change under each new CBA. The plaintiffs assert, therefore, that because pension plans are vested benefits and because the CBA uses the same durational language for pension plans that it uses for the health care benefits, the health care benefits also must be vested benefits. They argue that the agreements would not use the same language in sections 4A and 4C if it had different meanings.[7] This argument further bolsters the interpretation noted above that the expiration of a CBA affects only future retirees in the context of benefits. Reviewing "each provision in question as part of the integrated whole," the use of similar language in sections 4A and 4C provides substantial support for the plaintiffs's position. *Yard-Man*, 716 F.2d at 1479.[8]

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[6] This is perhaps where the *Yard-Man* inference makes the most sense. Retirees, who have left their bargaining unit, and can no longer rely on their union to maintain their benefits, are not likely to leave their benefits alterable based on the changing whims and relative bargaining power of their former union and employer. *See Golden*, 845 F.Supp. at 413.

[7] The district court in *Golden* likewise rejected the defendant's argument regarding the durational clauses because the same language was used regarding pensions and health insurance benefits. The district court stated that "[g]iven the defendant's logic, because its pension plan was incorporated into the collective bargaining agreement, its obligation to provide pensions ended with the expiration of the agreement." *Golden*, 845 F.Supp. at 415 n. 1.

[8] The district court in *Golden* characterized *Yard-Man* as "recogniz[ing] that employees are aware when they accept retiree benefits in

The district court also cited specific durational limits on other types of benefits in the Group Insurance Plan. The *Yard-Man* court held that "the inclusion of specific durational limitations in other provisions . . . suggests that retiree benefits, not so specifically limited, were intended to survive . . ." *Yard-Man*, 716 F.2d at 1481-82; *see also Kelsey-Hayes*, 954 F.Supp. at 1187. In the plans at issue here, the district court cited the specific durational limitations for workers on lay-off and on maternity leave. *Yolton*, 318 F.Supp.2d at 466-67.

In response to the defendants's arguments, the district court distinguished the language in this case from the plans at issue in *UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (N.D.Ohio 1983), and *Bittinger v. Tecumseh Products Co.*, 83 F.Supp.2d 851 (E.D.Mich.1998), upon which the defendants's rely.[9] In *Cleveland Gear*, the CBA between the parties stated that: "The Insurance Agreement and Insurance Plan, as revised, shall be effective as provided therein and shall remain in full force and effect during the term of this collective bargaining agreement." *Cleveland Gear*, 1983 WL 2174 at *2. The court concluded that the parties did not intend the benefits to vest and there was no language indicating that the benefits were lifetime benefits. *Id.* In the instant case, the district court acknowledged the *Cleveland Gear* conclusion, but distinguished it. In *Cleveland Gear*, in addition to the general durational language in the CBA, the insurance agreement *itself* contained similar limiting language. The insurance plan stated that it remained in effect "until discontinued or super-

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exchange for lower wages, that they cannot rely on their union to maintain those benefits once they have retired and left their bargaining unit. Thus, 'finding an intent to create interminable rights to retiree insurance benefits in the absence of explicit language, is not, in any discernible way, inconsistent with federal labor law.'" *Golden*, 845 F.Supp. at 413 (quoting *Yard-Man*, 716 F.2d at 1482).

[9] Of note, *Bittinger* was decided by the same district court as the instant case.

seded either in whole or in the termination or suspension of such Collective Bargaining Agreement." *Cleveland Gear*, at *3. Moreover, the district court in the instant case noted that the agreements in *Cleveland Gear* did not contain language that tied health insurance benefits to pension benefits as is the case here.

Likewise, the agreements in *Bittinger* were devoid of any language that tied health insurance benefits to pension benefits. The defendants rely on *Bittinger* principally because the Summary Plan Descriptions[10] in *Bittinger* reserved to the company the "absolute right, through the collective bargaining process, to amend, modify, or discontinue any or all of the benefits described in the [labor agreement] or the [health care plan] . . ." *Bittinger*, 83 F.Supp.2d at 858. In the plans at issue here, from 1974 to 1980 the Summary Plan Descriptions also contain some reservation of rights via the following language: "It is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, subject to the applicable provisions of the Labor Agreement between the Union and the Company, to terminate or change the Plan in the future." *Yolton*, 318 F.Supp.2d at 468. The district court rejected the defendants's arguments that this language permitted the modification of retirement benefits by finding that the "right to modify the Group Insurance Plans is expressly limited to the terms of the [CBAs]." *Id.* Because the district court found that the CBA creates the vested lifetime benefits, the court further concluded that this language does not reserve to the defendants the right to modify those benefits. *Id.*

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[10] A summary plan description is a publication explaining the benefits of a particular welfare benefit plan and ERISA requires employers to distribute the descriptions to employees. 29 U.S.C. § 1022. Furthermore, this Court has held that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir.1988).

Regarding the Summary Plan Descriptions from the post-1980 agreements, the district court noted that they no longer included the reservation language, but rather a "Cessation of Benefits" provision stating that coverage will cease if the plan is cancelled in whole or in part. *Id.* The Cessation of Benefits refers to "the Sections of this booklet entitled 'Retirement' and 'Termination of Coverage,'" where there is no "Cessation of Benefits" provision. *Id.* "Rather this section, like the Group Insurance Plan, only ties the continuation of retirement benefits to the retiree's or surviving spouse's eligibility for pension benefits: 'Employees who retire under the J.I. Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that plan, will be eligible for the benefits described in this section.'" *Id.* Further, this section provides that: "Except where noted, the benefits and maximums under these *continued* coverages *will be the same as those that were in effect on the day preceding your retirement.*" *Id.* (emphasis added).[11]

Finally, while the plain language of the CBAs requires us to conclude that the district court did not abuse its discretion by issuing the injunction, we also note that like the *Golden* case, "[d]efendant's conduct also indicates that plaintiffs'[s] benefits were vested." *Golden*, 845 F.Supp. at 415. The district court identified substantial evidence indicating an understanding that the health insurance benefits were lifetime benefits. This evidence includes statements from Case benefits employees that they were told and in turn told retiring employees "that their medical insurance benefits would continue unchanged for their lifetime . . ." *Yolton*, 318 F.Supp.2d at 469. A letter from Case's Director of Benefits & Practices sent to retirees in 1971 stated that the Company would fully cover benefits and that benefits would be in effect for life. *Id.*

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[11] The section also provides that "The cost of this coverage is fully paid by the Employer." *Yolton*, 318 F.Supp.2d at 468.

Documents related to various plant shutdown retirement agreements reflect that health insurance benefits "continu[ed] unchanged" "[f]or lifetime." *Id.* Medical insurance cards issued to retirees from Case's Industrial Relations Department in Terre Haute, Indiana contain the words "Lifetime" or "Lifetime Coverage." *Id.* The plaintiffs also presented benefits information issued to employees upon retirement that stated that the retiree and his wife were entitled to full health insurance coverage and that if the retiree predeceased his wife, her coverage "would continue as before" and would only change if she remarried. *Id.* at 469-70. Further, under a section entitled "Spouse's Benefits," the summary provided to the employee states that "In the event that you should die before your spouse and a spouse's option was spplied [sic] for, she will receive 55% of your pension for her lifetime along with the insurance which was mentioned previously." *Id.* at 470. The plaintiffs further offered affidavits of numerous other retirees and surviving spouses who were told by Case benefits representatives that they would receive post-retirement lifetime health insurance coverage fully paid for by the company. *Id.* Some of the affidavits include the accompanying documentation promising fully funded health insurance for life. *Id.*

On the other side, the defendants presented the testimony of Case's chief union negotiator and the former Director of Employee Benefits who stated that the company understood benefits to last only as long as the CBAs were in effect and that benefits were not fixed. *Id.* at 470. The district court rejected this testimony finding that it was not entitled "to considerable weight" because the union negotiator is still employed by Case and the former director receives $20,000 per month in consulting fees from the company. *Id.* at 471.

The most relevant extrinsic evidence the defendants present is evidence that during the negotiations that led to the FAS-106 Letter, UAW asked to add "lifetime" language to

the Letter which was rejected by the company. *Id.* The defendants argue that this demonstrates that the parties understood that the benefits were not vested. The district court rejected this argument, finding that it "does not necessarily mean that the union's representatives believed that the earlier agreements did not provide vested health care benefits. The representatives may have been attempting to more clearly state what they believed earlier agreements provided, particularly where the 'agreement' at issue established other limitations on those benefits." *Id.* As the injunction issued by the district court is a preliminary injunction, the defendants may continue to press their arguments below, but we do not find them sufficient to demonstrate that the district court abused its discretion in this case.

For all of the reasons discussed, the district court did not abuse its discretion by concluding that the plaintiffs were likely to succeed on the merits of their claim that they were entitled to fully funded lifetime health care benefits.

None of the parties' briefs contest the additional inquiries in the preliminary injunction context, and we find the district court's conclusions sound. The district court found that the plaintiffs would suffer irreparable harm without the injunction. *Id.* at 471-72. The court pointed to the limited and fixed incomes of the retirees, resulting in an inability to meet the expense of the premiums or resulting in retirees being unable to afford prescriptions or doctor visits. *Id.* Additionally, the court noted that to receive any health insurance benefits, El Paso was requiring the plaintiffs to contribute $501 *per month.* Accordingly, "the Court can surmise that the putative class members overall cannot afford to contribute such an amount until this case is resolved. Unable to afford the $501 premium, Plaintiffs will lose their health insurance, will not be able to pay for necessary prescription medications, and will not receive all of the medical care they need. Reimbursing Plaintiffs for their contributions at the end of the case, therefore, will not afford them relief." *Id.* at 472.

The district court also found that while the injunction will place a substantial expense on the defendants, this factor did not weigh heavily against the injunction. *Id.* at 473. According to the district court, "Defendants have paid the full costs of health care benefits for retirees and their surviving spouses for years prior to August 2002, and in this Court's opinion, the financial impact on Defendants being required to continue to pay these benefits is far less than the financial burden which would be placed on Plaintiffs if their request for a preliminary injunction is denied." *Id.* Finally, the district court found that the injunction supports the public interest in enforcing CBAs and preventing ERISA and LMRA violations. *Id.*

We therefore conclude that the district court did not abuse its discretion by issuing the injunction. Prior cases of this Court have highlighted factors indicating an intent to vest benefits that were present in this case. Additionally, we believe that the district court correctly interpreted the plain language of the CBAs and Group Insurance Plans as well as the agreement as a whole. The language tying health care benefits to pension benefits and the context of the bargaining demonstrate an intent to provide lifetime benefits. Furthermore, we do not believe that the general durational language in the CBA limits the duration of the health care benefits themselves, but rather merely provides a limitation on the agreement itself. The use of identical language in the CBAs referring to pension benefits and health care benefits provides strong additional support that the benefits are tied together and that they are lifetime benefits. Even if the agreements were ambiguous, the extrinsic evidence cited by the district court would support its finding and would not lead to the conclusion that the district court abused its discretion in issuing the injunction.

*C. Whether El Paso or CNH America is Liable for the Health Care Benefits*

The remaining dispute is between El Paso and CNH America. Each contends that the other is liable for the plaintiffs's health insurance benefits above the apparent cap imposed by the FAS-106 Letter. CNH America contends that El Paso, as Tenneco's successor, is solely responsible for all of the plaintiffs's health care benefits. El Paso argues that in the 1994 Reorganization Agreement it assumed liability for pre-IPO retiree health care benefits subject to the negotiated cap set forth in the FAS-106 Letter; thus, according to El Paso, CNH America is liable for costs in excess of the cap.

Initially, in its opinion issuing the preliminary injunction, the district court found that El Paso is primarily liable for the entire health care costs for pre-IPO retirees and their surviving spouses. *Yolton*, 318 F.Supp.2d at 474-75. The district court reasoned that the Reorganization Agreement's "Retained Liabilities" section provided that Tenneco assumed CNH America's liabilities for post-retirement health insurance benefits for pre-IPO retirees and their dependents. Nevertheless, the court found that CNH America "has not been released from its liability to provide fully funded, lifetime health insurance benefits to its retirees and their surviving spouses." *Id.* at 474. Notwithstanding Tenneco's assumption of the liabilities, the court held that CNH America remains secondarily responsible to the plaintiffs for the cost of the benefits. In sum, the district court concluded "that El Paso is liable for the full costs of the pre-IPO retirees' and surviving spouses' health insurance benefits. The Court may subsequently conclude that [CNH America] is also liable for these costs." *Id.* at 475.

Following the district court's opinion, El Paso filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). In ruling on the motion in an opinion issued on March 8, 2004, the district court noted that its original

conclusion that El Paso was primarily liable was based on the 1994 Reorganization Agreement. In its motion for reconsideration, El Paso argued that it was premature to resolve the issue of whether El Paso was required to indemnify CNH America for the health insurance benefits without providing El Paso the opportunity to address the issue and without fully resolving CNH America's liability for the costs as signatory to the relevant CBAs.

The court concluded "that El Paso is entitled to relief, as the Court erred in overlooking the fact that, as the signatory to the CBAs, [CNH America] retained liability for Plaintiffs'[s] health care costs despite El Paso's subsequent assumption of those liabilities in the Reorganization Agreement and Benefits Agreement." D. Ct. Op. of March 8, 2004 at 3. To reach this conclusion, the district court needed to address whether CNH America is a party to the CBAs—in essence, whether CNH America is the alter ego of JI Case.

CNH America's position is that it did not exist before July 1, 1994 when Case LLC it [sic] was created by JI Case executives; having not existed until this time, CNH America claims, it could not possibly have been a party to the CBAs signed before this date. CNH America further asserts that it is not the alter ego or successor of JI Case. The district court disagreed and found that CNH America is the alter ego or mere continuance of JI Case and therefore assumed the CBAs and their liabilities.

As the district court correctly noted, the Supreme Court has held that a successor corporation generally is not liable for its predecessors liabilities unless expressly assumed. *See e.g., NLRB v. Burns Int's Sec. Servs.*, 406 U.S. 272, 279, 286-88, 92 S.Ct. 1571, 32 L.Ed.2d 61 (1972). This rule is not absolute, however, as the Court has held that a CBA might remain in force "in a variety of circumstances involving a merger, stock acquisition, reorganization or assets purchase." *Id.* at 291, 92 S.Ct. 1571. The Supreme Court has also held that

when there is a "mere technical change in the structure or identity of the [old] employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management . . . the courts have little difficulty holding that the successor is in reality the same employer and is subject to all the legal and contractual obligations of the predecessor." *Howard Johnson Co. v. Detroit Local Joint Executive Bd.*, 417 U.S. 249, 259 n. 5, 94 S.Ct. 2236, 41 L.Ed.2d 46 (1974) (citing *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106, 62 S.Ct. 452, 86 L.Ed. 718 (1942)).

This Court has applied these principles in several relevant cases. To start, "[w]hether a company or individual is responsible for the financial obligations of another company or individuals is a question of federal law when it arises in the context of a federal labor dispute. Although state law cases may provide guidance in fashioning the content of federal law, they are not binding and thus do not control" the analysis. *NLRB v. Fullerton Transfer & Storage Limited, Inc.*, 910 F.2d 331, 335 (6th Cir.1990). This Court recognized, however, that federal law, like state law, generally recognizes the concept of limited liability. As the Supreme Court has stated, "[t]he insulation of a stockholder from the debts and obligations of his corporation is the norm, not the exception." *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402-03, 80 S.Ct. 441, 4 L.Ed.2d 400 (1960).

*Fullerton Transfer*, the case upon which CNH America relies, asked "which doctrine referred to as an 'alter ego doctrine' applies to this case." *Id.* at 366. "The alter ego doctrine was developed to prevent employers from evading obligations under the Act merely by changing or altering their corporate form." *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir.1986). Quite correctly, the Court recognized that the term alter ego "has accumulated a great deal of baggage in the context of labor disputes." *Fullerton Transfer*, 910 F.2d at 336. The doctrine is most commonly used in "labor cases to

bind a new employer that continues the operations of an old employer in those cases where the new employer is 'merely a disguised continuance of the old employer.'"[12] *Id.* (quoting *Southport Petroleum, Co. v. NLRB*, 315 U.S. 100, 106, 62 S.Ct. 452, 86 L.Ed. 718 (1942)); *see also Howard Johnson Co.*, 417 U.S. 249, 94 S.Ct. 2236, 41 L.Ed.2d 46 (1974). To determine alter ego status in this situation, courts ask "whether the two enterprises have substantially identical management, business, purpose, operation, equipment, customers, supervision and ownership." *Id.* (quoting *Nelson Electric v. NLRB*, 638 F.2d 965, 968 (6th Cir.1981)); *see also NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir.1986).[13] The Court described this as a "more relaxed, less exacting" application of the alter ego doctrine "[i]n order to effectuate federal labor policies." *Id.* Determination of alter ego status is a question of fact to be reversed only if clearly erroneous. *Allcoast Transfer*, 780 F.2d at 579 (citing *Southport Petroleum*, 315 U.S. at 106, 62 S.Ct. 452). In an alter ego analysis, "[n]o factor is controlling and all need not be present." *J.M.Tanaka Construction, Inc. v. NLRB*, 675 F.2d 1029, 1033 (9th Cir.1982). The analysis is "flexible" and "no one element should become a prerequisite to imposition of alter ego status; rather, all the relevant factors must be considered together." *Allcoast Transfer*, 780 F.2d at 582.[14]

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[12] The Court also noted that "[i]ncreasingly, the term also is applied to so-called double-breasted operations to determine whether two or more coexisting employers performing the same work are in fact one business, separated only in form." *Id.* at 336.

[13] The Court mentioned that "[t]he successorship doctrine is often confused with the alter ego doctrine. The successorship doctrine is used to determine whether a new employer has an obligation to bargain when there is a bona fide sale of the employing company. A bona fide sale is found when there is any substantial change in ownership or management." *Id.* at 336 n. 6 (citation and quotation marks omitted).

[14] Moreover, even when a reorganization is supported by legitimate reasons, the employer may be prevented from avoiding its prior labor obligations. *Allcoast Transfer*, 780 F.2d at 582.

In *Fullerton Transfer*, however, the Court declined to apply the more relaxed alter ego doctrine because it found that the facts before it did not present a case where the alleged alter egos are "engaged in the same business as the original company . . . Rather, they are, respectively, a corporation engaged in a different business and stockholders and officers of another corporation." *Id.* at 337. Consequently, the Court determined that the rationales justifying application of the relaxed standard were absent. *Id.*

The facts here, however, indicate that the more relaxed standard is appropriate. CNH America argues otherwise; particularly, CNH America argues that the so-called relaxed doctrine applies only to situations where there is evidence of an intent to avoid labor obligations. It points to *Fullerton Transfer* in support of its claim, but the language of *Fullerton Transfer* is not helpful. All that *Fullerton Transfer* stands for is the conclusion that the relaxed standard was not appropriate for the particular facts of that case.

Furthermore, post-*Fullerton Transfer* cases repudiate CNH America's claim. *See e.g., Wilson v. Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIQ*, 83 F.3d 747 (6th Cir.1996). In *Wilson*, the Court rejected the defendants's insistence that the alter ego doctrine "applies only to situations in which a change in the corporate form allows an employer to evade collective bargaining obligations, and that common ownership and evidence of an intent to avoid labor agreements are essential to an alter ego claim." *Id.* at 758-59. CNH America nevertheless insists that the district court erred by making an alter ego finding without evidence of an intent to evade labor obligations. We disagree. This Court, even in light of the language of *Fullerton Transfer*, has made clear that "common ownership or an intent to evade federal labor law obligations are not necessary prerequisites to a finding of alter ego status." *Id.* at 759. We need not, therefore, look for evidence of CNH America's

intent to evade any labor obligations in determining whether it remains liable under the CBAs as the alter ego to JI Case. Rather, "the essential inquiry under an alter ego analysis is 'whether there was a *bona fide* discontinuance and a true change of ownership . . . or merely a disguised continuance of the old employer.'" *Allcoast Transfer*, 780 F.2d at 579 (quoting *Southport Petroleum*, 315 U.S. at 106, 62 S.Ct. 452).

We conclude that the district court applied the appropriate standard. The court asked "whether the two enterprises have substantially identical management, business purpose, operation equipment, customers, supervision and ownership." D. Ct. Op. of May 8, 2004 (citing *Allcoast Transfer*, 780 F.2d at 579 (citations omitted)). JI Case and UAW were the parties to the CBAs. In 1994, Tenneco divested itself of its agriculture and construction assets by creating Case Equipment Corporation (which eventually became Case LLC and then CNH America). Upon the creation of the new corporation, Tenneco, JI Case, and Case Equipment entered into the Reorganization and Benefits Agreement whereby Tenneco and JI Case's assets were transferred to Case Equipment. Immediately following the reorganization, Case Equipment conducted an IPO and changed its name to Case Corporation and in September 2002 to Case LLC and later to CNH America.

Other factors indicate that CNH America is, for purposes of this case, the alter ego of JI Case. The Reorganization Agreement was signed for Case Equipment by Jean Pierre Rosso as its President and CEO. D. Ct. Op. Of May 8, 2004 at 6. At the time, Mr. Rosso was also the president and CEO of JI Case. *Id.* Prior to the Reorganization, Mr. Rosso, as the president and CEO of JI Case, sent a letter to retirees announcing that "[t]he leadership of Case and Tenneco have announced an action that, when completed, *will make Case* a publicly traded company." *Id.* The Reorganization Agreement was signed for JI Case by Theodore R. French, its Senior Vice President, CFO, and Treasurer, *Id.* at 6-7. Mr.

French then held the same position with Case Equipment and in fact signed the Benefits Agreement as Senior Vice President, CFO, and Treasurer of Case Equipment *and* JI Case. *Id.*

A few days after the Reorganization Agreement was executed, JI Case executed a Certificate of Amendment, effective July 1, 1994 at 12:01 a.m., changing its name to Tenneco Equipment Corporation. *Id.* at 7. Effective at 12:02 a.m., Case Equipment changed its name to Case Corporation. *Id.* "The same individual, acting in the same capacity for the new and old Case Corporations, executed both certificates." *Id.*

The district court also found that those individuals who were officers of JI Case prior to 12:01 a.m. on July 1, 1994, were the same individuals named as officers of Case Corporation at 12:02 a.m. *Id.* The new Case Corporation (Case LLC and then CNH America) operated under the same name as JI Case in the same manufacturing facilities with the same officers, employees, and business. *Id.* The new Case Corporation continued to correspond with retirees of JI Case using the same JI Case letterhead previously used by the old corporation. *Id.* at 7-8. "The letters from the new Case Corporation were signed by the same employees, working at the same locations, and in the same positions as the letters from the old Case Corporation." *Id.* at 8.

The Benefits Agreement included a provision that, except as otherwise specifically stated within the agreement, CNH America assumed and agreed to pay "all employment, compensation and benefit liabilities, whether arising prior to or after [the date of the agreement], with respect to all employees and former employees of [each subsidiary of Tenneco that assigned assets used in the farm and construction business to Case Corporation]." *Id.* Furthermore, CNH America assumed all CBAs covering employees of the farm and construction equipment business of JI Case, including the 1990 CBA. *Id.*

Based on the above factors, the district court concluded that the plaintiffs were likely to establish that CNH America is the alter ego of JI Case and therefore retained JI Case's labor law obligations. *Id.* The court further concluded, however, that the plaintiffs were *not* likely to succeed in their claim against El Paso regarding the labor law obligations because Tenneco was never a party to any CBAs. Thus, the district court concluded that the plaintiffs "will not likely succeed in establishing that El Paso is obligated *under those agreements* to pay the costs of Plaintiffs'[s] health insurance benefits." *Id.* at 9 (emphasis in original) (citing *Serv., Hosp., Nursing Home & Pub. Employees Union v. Commercial Property Servs., Inc.*, 755 F.2d 499, 503 (6th Cir.1985) (concluding that non-signatory to a CBA who is neither a successor or alter ego of signatory to the CBA cannot be bound by the provisions of the agreement)).

Finally, the district court noted that it may ultimately be correct in its initial conclusion that El Paso assumed CNH America's obligations to provide the benefits in the Reorganization Agreement, but noted that the *plaintiffs* do not seek relief based upon the Reorganization Agreement. Instead, El Paso's liability arises only as a result of CNH America's *cross-claim* against El Paso for breach of those agreements. Therefore, the court concluded it was premature to adjudicate that claim when addressing the plaintiffs's motion for a preliminary injunction. We agree with the district court's approach and affirm its judgment.

## IV.

## No. 04-2492: CNH America's Cross Claim Against El Paso

### *A. Additional Background*

The remaining issue is CNH America's cross-claim against El Paso. This claim requires the Court to determine who will pay for the benefits should the plaintiffs succeed on their

claim. To start, we turn to yet another opinion from the district court. On September 3, 2004, the district court granted CNH America summary judgment on its cross-claim against El Paso. The district court found that pursuant to the liability and indemnification provisions of the Reorganization and Benefits Agreement, El Paso had indemnified CNH America against *all* pre-Reorganization obligations CNH America had for retiree benefits. This included liabilities above the alleged cap agreed to in the FAS-106 Letter.

To recap, on October 3, 1993, as part of the Extension Agreement, JI Case and the UAW agreed to adopt the FAS-106 Letter of Agreement. The letter states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

When issuing the preliminary injunction discussed above, the district court found that this Letter had no effect on those retiring before its adoption (because those benefits vested) and therefore limited the scope of the preliminary injunction to those retiring before the date of the Letter.

During the Reorganization in 1994, additional agreements were signed allocating assets and liabilities of the various corporate entities. Section 3.02(c) of the Reorganization Agreement describes certain liabilities assumed by Tenneco for the pre-IPO retires:

> Except as set forth in the Benefits Agreement or the Tax Sharing Agreement, Tenneco or a Tenneco Subsidiary, as appropriate, (i) shall assume the Retained Liabilities

> effective as of the Reorganization Date and (ii) shall thereafter pay, perform and discharge in due course all of the Retained Liabilities.

The Reorganization Agreement then defines "Retained Liabilities" as:

> (ii) the Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date) of retirees of the Case Business in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the [Allocation] Agreement.

CNH America agreed to assume all other Case liabilities "other than the Retained Liabilities." In addition to the language in the Reorganization Agreement, the Allocation (or Benefits) Agreement has additional language providing guidance. Section 7.2.2 of the Allocation Agreement states:

> Subject to Section 7.4,[15] Tenneco shall retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date [i.e., the date of the agreement] for United

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[15] Section 7.4 provides the following limitation on the liabilities Tenneco assumed:

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result from any action of [Case LLC] after the Closing Date which increases such benefits, except to the extent that such benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case LLC] shall be liable. Without limiting the generality for the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case LLC] to increase or otherwise modify the per capita annual cost limits set forth in the October 3, 1993 agreement between Case and the UAW regarding "FAS-106 out-year Cost Limiters."

> State Employees retired prior to the Closing Date and their dependents.

Article V of the Reorganization Agreement further provides indemnification provisions requiring CNH America and Tenneco to defend and indemnify one another for failing to perform their obligations under the agreements. Section 5.01 requires Tenneco to

> indemnify, defend and hold harmless [Case LLC] . . . from and against any and all Liabilities, and any claims, demands and rights . . . arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco Subsidiary to pay, perform or otherwise discharge in due course any of the Retained Liabilities . . . and . . . to perform its obligations under this Agreement or any of the Ancillary Agreements.

Section 5.02 required the same of CNH America with respect to its obligations.

The district court reviewed the agreements pursuant to Delaware law as provided for in the agreements themselves. Under Delaware law, the terms of a contract "will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectation inconsistent with the contract language." *Eagle Indus., Inc. v. De Vilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997) (citation omitted). Thus, in the absence of any ambiguity, the express terms of the contract control. *Haft v. Dart Group Corp.*, 841 F.Supp. 549, 564 (D.Del.1993) (citing *Harry H. Rosin Co. v. Eksterowicz*, 73 A.2d 648, 651 (Del.Super.Ct.1950), and *Myers v. Myers*, 408 A.2d 279, 280 (Del.1979)). Extrinsic evidence may not be used if the terms of a contract are unambiguous. *Eagle Indus.*, 702 A.2d at 1232 (citations omitted).

The district court further noted that contract interpretation is a question of law. *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del.1990). If a contract is unambiguous,

therefore, summary judgment is appropriate because extrinsic evidence is neither relevant nor admissible to ascertain the parties's intent. *SBC Interactive, Inc. v. Corporate Media Partners*, 714 A.2d 758, 761 (Del.1998). Finding the contract unambiguous, the district court concluded "that since Tenneco (and thereby El Paso) assumed '*all* liability with respect to postretirement health and life insurance benefits to the extent that Case [was] obligated on the Closing Date . . .' and since that liability actually included costs above the cap at least for individuals retiring prior to the effective date of the FAS-106 Letter, El Paso is liable for the above-cap costs of Plaintiffs'[s] health insurance benefits."

CNH America argued that Tenneco's liability for pre-IPO retiree health benefits is unambiguously established by Section 3.02(c) of the Reorganization Agreement and Section 7.2.2 of the Allocation Agreement. El Paso argued that Tenneco assumed only below-cap costs of those benefits because Section 3.02(c) and Section 7.2.2 limit liability "to the extent that Case is obligated on the Reorganization Date." El Paso argued that the parties's agreements were premised on the belief that benefits were capped as of that date, and therefore, Tenneco assumed only the below-cap costs. El Paso supported its argument with extrinsic evidence. The district court rejected the extrinsic evidence, concluding that:

> This extrinsic evidence is not persuasive. It is simply statements made by parties *after* the Reorganization Agreement was entered into and reaffirms the parties' belief that retiree health benefit costs were capped. There is no dispute that at the time of the agreement El Paso (or Tenneco) and Case LLC believed that the costs were capped. This extrinsic evidence does not persuade the Court that it was the intent of the parties that Case LLC retained the liability for the above-cap costs.

The district court noted that the problem in this case arises because of the FAS-106 Letter. The court concluded already,

however, that the Letter does not cap the benefits of pre-Letter retirees and therefore, CNH America's liability was not capped with respect to those retirees. It therefore follows, according to the district court, that El Paso assumed these above-cap liabilities.

The district court found additional support for its conclusion in other parts of the parties's agreements. The Reorganization Agreement's definition of "Liabilities" includes "foreseen or unforeseen" liabilities as well as "known or unknown" liabilities arising pursuant to, among other things, an "Action," "before any court." Therefore, the district court stated:

> In summary, the Court concludes that the terms of the Reorganization Agreement and Allocation Agreement unambiguously reflect the parties'[s] intent that Tenneco would assume all of Case's liability for postretirement health insurance benefits to the extent Case was obligated for those benefits on June 23, 1994, including those which were unforeseen and/or unknown at the time. The Court has preliminarily determined that the FAS-106 Letter did not effectively cap Case's obligations with respect to hourly retirees who retired or elected to retire prior to the letter's effective date. It therefore follows that on June 23, 1994, Case was obligated for the full costs of Plaintiffs'[s] health insurance benefits. Pursuant to the unambiguous terms of the Reorganization Agreement and Allocation Agreement, Tenneco and now El Paso assumed those obligations.

Thus, the district court granted summary judgment in favor of CNH America.

*B. The Contracts Are Unambiguous and the District Court Properly Granted Summary Judgment to CNH America*

On appeal, El Paso argues first that the agreements cannot be "read as conclusively establishing" its liability—that is, El Paso argues that its interpretation of the agreements is a reasonable one that should be tried to a jury. Second, El Paso argues that there is at least a latent ambiguity based on CNH America's conduct over a five-year period, its failure to ever state that El Paso had obligations extending beyond the capped amounts, and its repeated statements acknowledging that El Paso's obligations were limited.

Regarding its first argument, El Paso points to the Delaware Supreme Court's decision in *Eagle Indus.*, 702 A.2d 1228. The court held that:

> Contract terms themselves will be controlling when they establish the parties'[s] common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language. When the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings, there is ambiguity.

*Id.* at 1232. El Paso argues that the contract language is fairly susceptible to different interpretations and that summary judgment was therefore inappropriate. El Paso's argument is essentially that the district court erred by ignoring the language "to the extent that Case is obligated on the Closing Date." This language, El Paso argues, is evidence of the parties's intent to limit liabilities according to their "contemporaneous understanding of what they were." Brief of El Paso at 22. Thus, according to El Paso, any liabilities not contemporaneously allocated were assumed as contingent obligations by CNH America. For this, El Paso points to section 2.1 of the Benefits Agreement.

On the other hand, CNH America points to the contract language as unambiguously establishing that Tenneco retained all liabilities related to the health care costs whether "foreseen or unforeseen, . . . accrued or unaccrued, known or unknown," that were incurred by JI Case prior to the Reorganization. Moreover, CNH America argues that it is irrelevant that the defendants believed that Tenneco's liability was capped by the FAS-106 Letter. The agreement explicitly allocated the risk of unforeseen liabilities on Tenneco. Regarding the disputed language ("to the extent Case is obligated on the Closing Date"), CNH America argues that it merely creates a clear division between Tenneco's "Retained Liabilities," i.e., those obligations to pre-Reorganization retirees on the closing date, and CNH America's future liabilities, i.e., those obligations to employees who would retire *after* the Closing Date. According to CNH America, the fact that it ended up with more liabilities on the Closing Date than Tenneco suspected does not turn the tide in El Paso's favor because this risk was specifically assumed by Tenneco by the language "unforeseen and unknown liabilities." Finally, CNH America argues that its course of conduct is not relevant because the contract language is unambiguous and "[i]f a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity." *Eagle Indus.*, 702 A.2d at 1232.

We believe that the district court correctly concluded that the contract is unambiguous and properly granted summary judgment in favor of CNH America. We recognize that the defendants claim that when they signed the FAS-106 Letter, they intended to cap JI Case's liability in October 1993.[16] When Case and Tenneco signed the reorganization agreements in June 1994, they both anticipated that Case's obli-

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[16] The Union claims, however, that the FAS-106 Letter was signed as a temporary accounting accommodation.

gations for retirement benefits were capped by the FAS-106 Letter and that the retirees themselves would be responsible for above-cap costs. Hence, the parties included the language that Tenneco would assume Retained Liabilities "to the extent that Case is obligated on the Reorganization Date . . ." In the absence of other language in the contract, we might have been persuaded to conclude that the parties were agreeing that Tenneco was assuming liability for a specific dollar amount—the below-cap costs. We would have been compelled to conclude as much if the parties had specifically so stated. Nevertheless, the parties were not so specific and we are required to turn to other language and read the document as an integrated whole. In the parties's definition of Liabilities, we find that Liabilities (and hence Retained Liabilities) includes those liabilities "foreseen or unforeseen . . . known or unknown . . . accrued or unaccrued." Thus, we read the contract unambiguously to allocate to Tenneco Case's Retained Liabilities, including those unforeseen or unknown. The parties's beliefs about the *extent* of the liabilities and their actions pursuant to those beliefs do not demonstrate any ambiguities in the contract language allocating unknown or unforeseen liabilities to El Paso. That is, the only ambiguity in this case is the amount of the liabilities because of the parties's assumption that the FAS-106 Letter capped benefits. The language of the agreements, adopted by sophisticated entities with able counsel, allocated, as most contracts do, the risk of increased liabilities upon one of those parties—El Paso. "Contract language is not ambiguous simply because the parties disagree concerning its intended construction." *Eagles Indus.*, 702 A.2d at 1233 n. 8.

El Paso does rely heavily on CNH America's course of conduct after the Reorganization—specifically the fact that it never stated that El Paso had liability above the caps, the fact that it paid above cap costs of $25 million in 1998, and its repeated written statements that El Paso's obligations were limited. The extrinsic evidence, however, cannot be consid-

ered when contract language is unambiguous. In any event, we also agree with the district court that the extrinsic evidence merely demonstrates the parties's belief that their obligations were capped by the FAS-106 Letter and does not indicate that the indemnification contract language itself was ambiguous.

In sum, Section 7.2.2 provides that Tenneco would assume all postretirement health care benefits for those who retired prior to July 1, 1994 to the extent that JI Case was obligated on the Closing Date. The district court has not abused its discretion in issuing a preliminary injunction on the basis that the benefits were lifetime benefits vested for those who retired prior to October 3, 1993 and, thus, the FAS-106 Letter could not limit those benefits. This means, therefore, that despite the parties's error regarding the extent of liabilities, CNH America is likely to be held liable for the vested lifetime health care benefits for those who retired prior to October 3, 1993 on the Closing Date. Section 7.2.2, however, provides that Tenneco assumed those liabilities. This is reinforced by the parties's definition of "Liabilities" to include those "absolute or contingent, matured or unmatured, liquidated or unliquidated, foreseen or unforeseen . . . accrued or unaccrued, known or unknown, whether having arisen or arising in the future." We are convinced that the contract is unambiguous and therefore affirm the district court's judgment.

Finally, based on this interpretation, the district court did not abuse its discretion in cutting off discovery or in fashioning an equitable remedy under the indemnification provision.

V.

For the foregoing reasons, we AFFIRM the district court's judgment in all respects on each of the four appeals.

**APPENDIX B**

UNITED STATES DISTRICT COURT
E.D. MICHIGAN
SOUTHERN DIVISION

No. 02-75164

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,
*Plaintiffs*,

v.

EL PASO TENNESSEE PIPELINE CO., and CASE CORPORATION, a/k/a CASE POWER EQUIPMENT CORPORATION,
*Defendants*.

Dec. 31, 2003

*OPINION*

DUGGAN, *District Judge*.

Plaintiffs, six hourly retirees or surviving spouses of hourly retirees of the J.I. Case Company or the Case Corporation, filed this class action lawsuit seeking fully funded, lifetime retiree health care benefits. Plaintiffs brought their lawsuit on behalf of retirees and surviving spouses of retirees who retired from J.I. Case or the Case Corporation prior to July 1, 1994, the date when Case Corporation was spun-off from its parent corporation, Tenneco, Inc., and reorganized as an independent publicly owned company. The Court has not yet addressed Plaintiffs' motion for class certification. Presently before the Court is Plaintiffs' motion for preliminary injunction, filed March 21,-2003. A hearing on Plaintiffs' motion was conducted on October 30, 2003.

In their Complaint, Plaintiffs allege two counts against Defendants. In Count I, Plaintiffs allege that Defendants breached labor agreements in violation of Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, by requiring Plaintiffs to contribute substantial premiums to maintain their retiree or surviving spouse health care benefits. In Count II, Plaintiffs allege that Defendants breached their fiduciary duties under the various labor agreements which constitute employee welfare plans within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*

Defendants are El Paso Tennessee Pipeline Company and Case, LLC.[1] J.I. Case was established in 1842 and became a wholly owned subsidiary of Tenneco in 1970. In 1990, J.I. Case changed its name to Case Corporation ("Case").[2] Tenneco continued to operate Case as a wholly owned subsidiary until 1994.

In June 1994, Tenneco underwent a reorganization and decided to sell its agriculture and construction business assets, which consisted of some of Case's assets and some of Tenneco's assets. Pursuant to a Reorganization Agreement, Tenneco sold these assets to a "newly-formed" corporation, Case Equipment Corporation ("Case Equipment"). On July 1, 1994, Case Equipment conducted an initial public offering ("IPO") of its shares and changed its name to Case Corporation. Then in September 2002, Case Corporation converted to a limited liability company, Case, LLC ("Case LLC").

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[1] Plaintiffs name the Case Corporation, a/k/a Case Power Equipment Corporation, as a defendant, rather than Case, LLC. However the history of the various entities involved in this lawsuit, as set forth *infra*, indicates that the proper name of the defendant sued is Case, LLC. In fact, Case, LLC is the party which has responded to the Complaint.

[2] Although some Plaintiffs or putative class members may have retired when the company still was named "J.I. Case," for ease of reference the Court will refer to their employer, as well as Case Corporation, as "Case."

In 1996, Tenneco merged with a subsidiary of El Paso Natural Gas Company and was renamed El Paso Tennessee Pipeline Company ("El Paso").

I. *Factual and Procedural Background—The Relevant Labor Agreements and Other Documents*

The International Union, United Automobile, Aerospace and Agricultural Workers of America ("UAW") represented Case employees in collective bargaining. Case and the UAW negotiated a series of collective bargaining agreements ("CBAs"), referred to as Central Agreements.[3] Case and the UAW also negotiated a series of Group Insurance Plans which addressed group insurance benefits for various categories of employees and former employees.[4] Group insurance benefits include, *inter alia,* life insurance benefits, major medical expenses coverage, and prescription drug coverage. The Central Agreements between the UAW and Case from 1971 forward contain the following language with respect to the Group Insurance Plans ("GIPs"): "The group insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made a part of this Agreement." *See* El Paso App., Vol. I, Ex. 2 A-H.

The 1971 Group Insurance Plan provides that employees retiring under Case's "Pension Plan for Hourly Paid Employees" or "their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan are eligible for" Group Life Insurance, Major Medical Expense Insurance, and

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[3] Case maintained a number of facilities throughout the mid-western United States. Each location had a separate contract book comprised of the Central Agreement and the relevant Local Supplement. As the Central Agreements are the relevant document in these proceedings, the Court will not discuss the provisions of the Local Supplements.

[4] Prior to 1971, the Group Insurance Plans were contained within the Central Agreements. From 1971 forward, the Group Insurance Plans were separate agreements.

the Prescription Drug Plan. *See* Pls.' Exhibits, Vol. II, Ex. E at 26-27. Subsequent GIPs contain identical language. The 1971 Group Insurance Plan required the following "Contribution for Coverage" under the Major Medical Expense Insurance and Prescription Drug Plan:

> (i) For eligible Retired Employees and Surviving Spouses who have enrolled and are age 65 or older, the Company *shall pay the full premium cost* of the above coverages.
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> (ii) Effective January 1, 1975, for eligible Retired Employees and Surviving Spouses who have enrolled and are under age 65, the Company *shall pay the full premium cost* of the above coverages.

*See id.* In subsequent GIPs, Case agreed to "pay the full premium cost" of health care coverage for eligible retirees and their surviving spouses, regardless of age. *See id.* Over the years, the provisions in the various GIPs addressing retiree health care benefits differed only in that Case agreed to provide additional health care benefits for retirees and their surviving spouses.

During the 1980's and 1990's, some Case employees retired when Case decided to close the facilities at which they worked. Prior to these plant closings, the UAW and Case entered into Plant Shutdown Agreements ("Shutdown Agreements"). In 1987, before Case closed its Rock Island, Bettendorf, and Terre Haute facilities, the UAW and Case entered into such an agreement. In 1993, the UAW and Case entered into a Shutdown Agreement after Case announced its intention to terminate activities at its Memphis Depot and Wausau plant and to cease most covered operations at its Hinsdale engineering center.

The Shutdown Agreements offered eligible employees three options when their positions were terminated: (A) layoff/ master recall, (B) special plant shutdown retirement, or

(C) severance pay. Employees selecting Option B received, among other entitlements, special early retirement pension benefits and the post-retirement medical coverage that apply generally to retired Case/UAW employees. The Shutdown Agreements specifically provide that Case representatives will fully explain the various options to eligible employees before they are required to make a selection.

The Shutdown Agreements required the UAW, for itself and on behalf of its members, to release and discharge Case from all claims "other than claims and obligations provided for in [the] Shutdown Agreement." *See, e.g.*, El Paso App., Vol II, Ex. 12 at CASELLC 02177. For example, the release clause in the 1987 Shutdown Agreement provides that the UAW, for itself and the employees who it represents, releases Case from all claims, "*except* any claim which may be based upon an alleged violation of this Shutdown Agreement . . . and any claims pertaining to *vested residual rights to* pension benefits, life insurance *or hospitalization/medical insurance.*" *See* Pls.' Exhibits, Vol. III, Ex. U at 24 (emphasis added).

Faced with increasing financial problems, Case sought to reduce its workforce in the early 1990's. To effectuate that goal, Case and the UAW entered into an "Agreement on Case Voluntary Employment Reduction Program" ("Early Retirement Incentive Program") in 1991. Some Case employees (including some putative class members) retired in 1991 and 1992 pursuant to this Early Retirement Incentive Program. Case offered employees four options under this program: (1) Special Early Retirement Benefit, (2) Voluntary Termination of Employment Benefit ("VTEP"), (3) Special Layoff with Partial VTEP Benefit, and (4) Special Layoff with Grow-In to Special Early Retirement Benefit. Plaintiffs who chose Special Early Retirement or chose to grow-in to such retirement were entitled to special pension benefits and "the post-retirement medical coverage and Medicare Part B premium pay-

ments that apply generally to retired Case/UAW employees."[5] *See* Case Exhibits, Vol. III, Ex. 21 at CASELLC 00244. The Early Retirement Incentive Program provides that employees may be required, as a condition for receiving a benefit, to sign a release or other binding agreement satisfactory to Case. *See id.* at CASELLC 00249.

The 1990 Central Agreement is the last CBA under which Plaintiffs and members of the putative class retired. That agreement was effective from June 2, 1990 through October 2, 1993. However on November 5, 1993, Case and the UAW entered into an Extension Agreement which extended the 1990 Central Agreement through February 2, 1995.

With respect to insurance benefits, Section 2 of the Extension Agreement provides that "[e]xcept for pension improvements, all wage schedules, pension benefit and insurance levels would remain in effect at the current schedule rates or levels for the term of the Extension Agreement." *See* Pls.' Exhibits Vol II, Ex. G. In Section 9 of the Extension Agreement, however, Case and the UAW agreed to adopt, effective October 3, 1993, an appended Letter of Agreement (the "FAS-106 Letter") which appears to cap Case's liability for certain health care benefits.[6] The FAS-106 Letter, written by Case's Senior Vice-President to the UAW's Secretary-Treasurer, states:

> This will confirm our understanding that the average per capita annual cost to the Company of providing medical

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[5] Employees selecting "Special Layoff with Grow-In to Special Early Retirement Benefit" became entitled to special early retirement benefits once they attained age 50 and had at least 10 years of service. *See* Case Exhibits, Vol. III, Ex. 21 at CASELLC 00248.

[6] FAS-106 refers to an accounting standard promulgated by the Financial Accounting Standards Board. Among other things, it required companies to report their post-retirement health care obligations on their financial statements on an accrual basis, rather than on a "pay-as-you-go" basis.

> and related benefits under the Case Group Benefit Plan to retired employees and surviving spouses of deceased employees shall not exceed $2,750 for Medicare eligible individuals and $8,500 for those individuals who are not eligible for Medicare. Notwithstanding the foregoing, no covered person shall be required to pay a portion of any excess amount prior to April 1, 1998.

*See id.*, Att. B. The parties dispute the effect of the [sic] this letter.

Referring to the FAS-106 Letter as a "Cap Agreement," Defendants contend that Case and the UAW intended it to be a "cost sharing agreement" between Case and its retirees, whereby Case's obligations for retiree and surviving spouse health care benefits would be limited, effective April 1, 1998. Plaintiffs, on the other hand, contend that the UAW and Case only intended the FAS-106 Letter to serve as an accommodation, whereby the UAW agreed to allow Case to temporarily reduce the FAS106 accounting figure that it reported on its financial records.[7]

On June 23, 1994, pursuant to Tenneco's sale of its and Case's farm and construction equipment assets to Case Equipment, Tenneco and Case, on the one hand, and Case Equipment,[8] on the other hand, signed a number of agreements, including a Reorganization Agreement and an Employee Benefits and Compensation Allocation Agreement ("Benefits Agreement"). Pursuant to the Reorganization

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[7] As discussed *infra*, the parties offer conflicting evidence as to whether the UAW and Case intended the FAS-106 Letter to serve as a cap on retiree health care benefits or merely as an accommodation to Case for accounting purposes. Nevertheless, as also discussed *infra*, even if the UAW and Case intended the FAS-106 Letter to serve as a cap, that cap only could effect the rights of employees *retiring after* the effective date of the FAS-106 Letter.

[8] In the Reorganization Agreement, Case Equipment is referred to as "Newco."

Agreement, the parties sought to reorganize the farm and construction equipment business of Tenneco and its subsidiaries (e.g., Case) so that neither Case Equipment nor any of its subsidiaries would have any interest in any business of Tenneco and its subsidiaries . . . and neither Tenneco nor any of its subsidiaries would have any interest in the farm and construction equipment business except by reason of "(i) their ownership of capital stock of [Case Equipment], the Demand Notes and the Subordinated Debt, (ii) the Retained Assets and (iii) the Retained Liabilities." *See* Case Exhibits, Vol. IV, Ex. 34 at CASELLC07074 (Art. III., Section 3.01). Tenneco assumed, with certain limitations, the Retained Liabilities and agreed to "pay, perform and discharge in due course all of the Retained Liabilities." *See id.* at CASELLC07076 (Art. III, Section 3.02(c)). Included in the Reorganization Agreement's definition of "Retained Liabilities" are the health care benefits currently in dispute:

> [T]he Case Liabilities for postretirement health and life insurance benefits (to the extent that Case is obligated on the Reorganization Date [June 23, 1994]) of retirees of the Case Business[9] in the United States and current employees of the Case Business in the United States who retire on or before July 1, 1994 and their dependents as more fully described in the Benefits Agreement.

*See id.* at CASELLC07071. Tenneco agreed to indemnify Case Equipment "from and against any and all Liabilities, and any claims, demands and rights of the [Case Equipment] Indemnitees arising out of or due to . . . the failure or alleged failure of Tenneco or any Tenneco subsidiary to pay . . . any of the Retained Liabilities . . ." *See id.* at CASELLC07081.

The Benefits Agreement further defines Tenneco's and Case Equipment's liabilities with respect to labor, employ-

[9] The term "Case Business" refers to the farm and construction business of Tenneco and its subsidiaries. *See id.* at CASELLC07067.

ment, compensation and benefit matters following the reorganization. Pursuant to Section 7.2.2, and subject to Section 7.4, the Benefits Agreement provides that Tenneco will "retain all liability with respect to postretirement health and life insurance benefits to the extent that Case is obligated on the Closing Date [i.e. the date of the agreement] for United States employees retired prior to the Closing Date and their Dependants" *See* Case Exhibits, Vol. IV, Ex. 37 at CASELLC07110 (Section 7.2.2). Section 7.4 establishes the following limitations on the liabilities Tenneco assumed:

> Tenneco shall not be liable for any postretirement health and life insurance benefit costs which result from *any action* of [Case Equipment] *after the Closing Date* which increases such benefits, except to the extent that such benefit increases are required by applicable law. To the extent that Tenneco is not liable for such benefits, [Case Equipment] shall be liable.
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> Without limiting the generality of the foregoing, it is specifically provided that Tenneco shall not be liable for any increase in the cost of providing postretirement health and life insurance benefits that result from any agreement by [Case Equipment] to increase or otherwise modify the per capita annual cost limits set forth in [the FAS-106 Letter]

*See id.*

Based on these agreements, Tenneco began paying the full cost of Plaintiffs' health care benefits in July or August 1994. In November 1996, Tenneco sent a letter to its retirees, informing them of its impending merger with El Paso and advising those individuals who retired from Case that their health care benefits would be maintained by El Paso after the merger.

On October 27, 1997, El Paso sent a letter to Plaintiffs informing them that they will be required to contribute $56

per month for health care coverage as of April 1, 1998. El Paso stated that it was authorized to seek this contribution based upon the FAS-106 Letter. El Paso also stated that it reserved "the right to make additional changes, including changes to the cost-sharing features of the plan." *See* Pls. Ex., Vol. I, Ex. D.

Prior to April 1, 1998, as part of their negotiations for a new CBA, the UAW asked Case LLC to pay the $56 per month contribution that El Paso sought from Pre-IPO retirees and their surviving spouses for their health care coverage.[10] Case LLC contends that it had no legal obligation for these health care benefits, but agreed to pay the retirees' contributions "as a show of goodwill toward the UAW." On October 1, 1998, Case LLC and the UAW entered into an agreement (the "VEBA Agreement")[11] in which both parties agreed "to make deposits of specified amounts in trust to be applied to defray partially the cost of medical benefits in excess of the Cap under El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . ." *See* El Paso App., Vol. III, Ex. 41 at UAW1446. Case LLC contends that in the VEBA Agreement, the UAW agreed to fully release it from any further obligations with respect to any costs associated with pre-IPO retiree health care benefits. With respect to that contention, Section 3.3 of the agreement provides in part: "Obligations under this Plan shall be limited to the payment of Benefits provided in Article III of this Plan. Neither Case, the UAW, nor the Administrator shall be responsible by reason of this Plan for payment of any benefits due to covered

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[10] While these negotiations and subsequently described conduct occurred before Case Corporation acquired limited liability status, for case of reference the Court will refer to Case Corporation as Case LLC.

[11] The agreement is referred to as the VEBA Agreement because the trust established was a "voluntary employee beneficiary association," pursuant to the requirements for tax exemption under Internal Revenue Code § 501(c)(9). *See* El Paso App., Vol. III, Ex. 40 at 3.

individuals under the El Paso Medical Plan." *See id.* at UAW1452.

On November 5, 1997,[12] Case LLC sent pre-IPO retirees and their surviving spouses a letter, informing them that the company would be pay [sic] their $56 per month health insurance premium through the end of 1998. Case LLC further wrote: "We expect to be discussing the longer term issues involved in your El Paso plan during our upcoming contract negotiations." *See* Case Exhibits, Vol. IV, Ex. 42.

In the Summer of 2002, when the VEBA funds contributed by Case LLC and the UAW were exhausted, the UAW asked Case LLC and El Paso to make additional contributions to fund the above-cap health insurance costs for pre-IPO retirees. Both entities refused. In August 2002, El Paso sent a letter to pre-IPO retirees and their surviving spouses, informing them that they would have to contribute $290 per month in order to continue receiving their retiree health care benefits. In December, El Paso sent another letter to pre-IPO retirees and their surviving spouses, notifying them that their premiums would increase to $501 per month beginning in January 2003. Plaintiffs filed this lawsuit on December 23, 2002.

II. *Issues Presented*

Plaintiffs' motion for preliminary injunction raises a number of issues. First, whether Plaintiffs are entitled to fully funded, lifetime health care benefits under the relevant labor agreements. Second, whether El Paso and/or Case LLC are liable for those employee welfare benefits. Finally, if El Paso and Case LLC are liable, what is the extent of each company's liability.

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[12] It appears that this date is an error or that Case informed the retirees and surviving spouses of its contribution before the VEBA Agreement was executed.

III. *Standard for Issuing a Preliminary Injunction*

To determine whether to grant Plaintiffs' motion for preliminary injunction, the Court must consider four factors: (1) Plaintiffs' likelihood of success on the merits; (2) whether Plaintiffs will suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir.1996)(citing *Performance Unlimited v. Questar Publishers, Inc.*, 52 F.3d 1373, 1381 (6th Cir.1995)). The Court must balance all four factors. *Id.* "None of these factors, standing alone, is a prerequisite to relief . . ." *Id.* (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir.1985)).

IV. *Plaintiffs' Likelihood of Success on the Merits*

Plaintiffs are likely to succeed in this action if the relevant labor agreements between the UAW and Case guaranteed them a vested right to receive fully funded, lifetime health insurance benefits.

A. Applicable Law

A retiree health insurance benefit plan is a welfare benefit plan under ERISA. *Maurer v. Joy Tech., Inc.*, 212 F.3d 907, 914 (6th Cir.2000)(citing *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1005 (6th Cir.1993)). Unlike pension plans, welfare benefit plans are not subject to mandatory vesting requirements under ERISA. *Id.* Thus courts have held that "after a CBA expires, an employer generally is free to modify or terminate any retiree medical benefits that the employer provided pursuant to that CBA." *Bittinger v. Tecumseh Prod. Co.*, 83 F.Supp.2d 851, 857 (E.D.Mich.1998) (quoting, *Am. Fed'n of Grain Millers v. Int'l Multifoods*, 116 F.3d 976, 979 (2d. Cir.1997)). The parties to a CBA may agree, however, that the benefits provided for in the CBA will

vest and thus survive the termination of the CBA. *Maurer*, 212 F.3d at 914. If the parties intended the benefits to vest for the lifetime of the retirees, the employer's unilateral modification or reduction of those benefits will constitute an LMRA violation. *Id.* (citing *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir.1991)).

The Sixth Circuit Court of Appeal's decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (1983), sets forth the guiding principles for determining whether the parties to a CBA intended for retiree health insurance benefits to vest. Pursuant to these principles, courts must apply basic rules of contract interpretation to discern the intent of the parties:

> The court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent . . . The court should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties. As in all contracts, the collective bargaining agreement's terms must be construed so as to render none nugatory and avoid illusory promises. Where ambiguities exist, the court may look to other words and phrases in the collective bargaining agreement for guidance. Variations in language used in other durational provisions of the agreement may, for example, provide inferences of intent useful in clarifying a provision whose intended duration is ambiguous. Finally, the court should review the interpretation ultimately derived from its examination of the language, context and other indicia of intent for consistency with federal labor policy.

*Id.* at 1479-1480 (citations omitted). As the *Yard-Man* court further advised, courts should look to extrinsic evidence to determine the parties' intent only when the terms of the contract are ambiguous. *Id.* at 1480.

Considering the context in which the benefits at issue arose in *Yard-Man,* the Sixth Circuit went on to note that since benefits for retirees are only permissive rather than mandatory subjects of collective bargaining, "it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." *Id.* at 1482 (citations omitted). Thus, the court noted, there is an inference that retiree benefits will vest:

> [R]etiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained. Thus, when the parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree.

*Id.* While other circuits have rejected this inference, the Sixth Circuit continues to rely upon it to interpret CBAs. *See, e.g., Maurer*, 212 F.3d at 915; *see also, Golden v. Kelsey-Hayes Co.*, 73 F.3d at 656 (concluding that *Yard-Man* is still good law). The *Maurer* court noted, however, that "although there is an inference that the parties to a CBA intended for retiree benefits to vest, the burden of proof does not shift to the employer, and it is not required that specific anti-vesting language be used before a court can find that the parties did not intend benefits to vest." *Maurer*, 212 F.3d at 915 (citing *UAW v. BVR Liquidating, Inc.*, 190 F.3d 768, 772 (6th Cir.1999)).

B. Analysis[13]

The Group Insurance Plans provide that employees retiring under Case's pension plan and surviving spouses eligible to receive a spouse's pension under that plan are eligible for group health insurance benefits. This express language is similar to the following language in the insurance agreement considered in *Golden v. Kelsey-Hayes Company*: "The Company shall contribute the full premium or subscription charge for health care . . . coverage . . . for . . . a retired employee and his eligible dependents *provided such retired employee is eligible for benefits under Article II of the . . . Pension Plan*". 954 F.Supp. 1173, 1186 (E.D.Mich.1997). The CBA considered in that case contained a similar provision stating that "The Company will pay the full cost of hospital and medical expense coverage of currently enrolled pensioners . . . provided the pensioner is eligible for benefits under the Gunite Pension Plan." *Id.* The district court, determining that these provisions conferred vested benefits upon the retirees, held "that eligibility for retiree health benefits is tied to eligibility for lifetime pension benefits or survivor spouse income." *Golden v. Kelsey-Hayes Co.*, 845 F.Supp. 410, 415 (E.D. Mich.1994), *aff'd* 73 F.3d 648 (6th Cir.1996). The court reasoned that since retirees are eligible to receive pension benefits for life, it therefore appears that the parties intended the employer to provide lifetime health benefits as well.

Further supporting a finding that the parties in this case intended retiree health care benefits to vest, is the fact that the Group Insurance Plans contain no express limitations on the

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[13] The Shutdown Agreements and Early Retirement Incentive Program provide retirees and their surviving spouses with those health care benefits set forth in the Group Insurance Plans then in effect. *See, e.g.*, Case Exhibits, Vol. III, Ex. 21 at CASELLC00244; Pls.' Exhibits, Vol. III, Ex. U at CASELLC02140. Thus the Court's analysis as to whether Plaintiffs who retired pursuant to Central Agreements and Group Insurance Plans are entitled to vested health care benefits, applies equally to Plaintiffs who retired under these special programs.

duration of such benefits. In comparison, the plans do set forth express limitations on the duration that other categories of employees are entitled to such benefits. For example, active employees on lay-off or on leave are entitled to continued group insurance benefits according to a specific schedule. *See, e.g., id.*, 1990 Plan at 40-41. Employees on maternity leave are entitled to benefits for up to 12 months following the date their leave of absence commenced. *See id.* As the *Yard-Man* court held, "the inclusion of specific durational limitations in other provisions . . . suggests that retiree benefits, not so specifically limited, were intended to survive . . ." *Yard-Man*, 716 F.2d at 1481-82; *see also Kelsey-Hayes*, 954 F.Supp. at 1187.

Defendants contend that the express language of the Central Agreements and Summary Plan Descriptions indicate that Plaintiffs' health care benefits did not vest. Defendants focus on the durational clause within the Central Agreements which states that the Group Insurance Plans will run concurrently with the Central Agreements. Relying on this Court's previous decision in *Bittinger v. Tecumseh Prods. Co.*, 83 F.Supp.2d 851 (E.D.Mich.1998), and the District Court for the Northern District of Ohio's unpublished decision in *UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (October 20, 1983), Defendants argue that this provision demonstrates that the UAW and Case intended *all* group insurance benefits to cease when the Central Agreements terminated.

A number of courts have held that such general durational provisions only refer to the length of the agreements and not the period of time contemplated for retiree benefits. *Kelsey-Hayes*, 845 F.Supp. at 414. Absent specific limitations on the duration of particular benefits, the courts have held that such provisions say nothing about the duration of those benefits. *Id; see also Yard-Man*, 716 F.2d at 1482. Furthermore, the

labor agreements in *Bittinger* and *Cleveland Gear*, are distinguishable from those in the present matter.

In *Cleveland Gear*, the parties' CBA contained a provision limiting the duration of their insurance agreement and insurance plan to the CBA's term. *Cleveland Gear*, 1983 WL 2174, *2. The parties' insurance agreement and insurance plan, however, also contained durational clauses, providing that those agreements continued "until discontinued or superseded either in whole or in the termination or suspension of such Collective Bargaining Agreement . . ." *Id.* at *3. The court found the three agreements "totally void of any language from which an intent to create lifelong insurance benefits [could] be inferred." *Id.* In comparison, the agreements at issue here expressly contain such language that is, the GIPs tie retirees' and surviving spouses' eligibility for health care coverage to their eligibility to receive a pension.

For the same reason, *Bittinger* is distinguishable as this Court specifically found in that case that the labor agreement lacked any language linking retiree and surviving spouse eligibility for health care coverage to pension benefits. *Id.* at 862. Defendants contend that *Bittinger* nevertheless is controlling because the insurance plan in that case, like the Summary Plan Descriptions ("SPDs") at issue here, contained provisions in which the employer reserved the right to change the terms of the group insurance plan.[14] In *Bittinger,* the health care plan reserved to the employer the "absolute right, through the collective bargaining process, to amend, modify, or discontinue any or all of the benefits described in the [labor agreement] or the [health care plan] . . ." *Bittinger,* 83 F.Supp.2d at 858. Here, the SPDs outlining the Group

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[14] The Sixth Circuit has held that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir.1988).

Insurance Plans between 1974 and 1980 include the following reservation language:

> It is hoped that the Group Policies will be continued indefinitely through the years, but your employer necessarily reserves the right, *subject to the applicable provisions of the Labor Agreement* between the Union and the Company, to terminate or change the Plan in the future.

*See, e.g.*, Case LLC Exs, Vol. II, Ex. 7 at 3. Thus Case's right to modify the Group Insurance Plans is expressly limited to the terms of the Central Agreements.

More importantly, any language reserving to the employer the right to change the plan cannot be considered separately from the entire language of the SPDs. Specifically, the section of the SPDs entitled "Provisions Applicable to Retired Employees" provides that "[t]he insurance outlined below will be provided for you if you retire under the Employer's Pension Plan . . . and will be provided for your dependent spouse if, on or prior to the date of your retirement, you elect that your pension be paid to your spouse *after your death* . . ." *See id.* at 32 (emphasis added). As the triggering event for a surviving spouse's receipt of benefits i.e. the retiree's death may occur after the CBA's termination, this provision suggests that Case's promise could remain outstanding beyond the term of the CBA. If retiree and surviving spouse insurance benefits terminated at the end of the relevant Central Agreement's term, this promise would be illusory for most surviving spouses. This suggests that Case and the UAW intended such benefits to continue indefinitely, despite Case's retention of some right to change the Group Insurance Plan. *Compare Yard-Man*, 716 F.2d at 1481 (finding that company's promise to pay insurance benefits once retirees reach age 65, when they are entitled to retire at 55, would be illusory if retiree insurance benefits terminated at end of the collective bargaining agreement's three year term).

Furthermore, SPDs after 1980 do not contain language expressly reserving to Case the right to terminate or change the plan, but rather include "Cessation of Benefits" provisions stating that coverage will immediately cease if, *inter alia*, the Plan is cancelled in whole or in part. *See* Case LLC Exhibits, Vol. III, Ex. 18 at CASELLC 07393 & 07404. This distinction from earlier SPDs is important because the "Cessation of Benefits" further refer to "the Sections of this booklet entitled 'Retirement' and 'Termination of Coverage.'" *See id.* The "Retirement" section does not contain any "Cessation of Benefits" provision. Rather this section, like the Group Insurance Plan, only ties the continuation of retirement benefits to the retiree's or surviving spouse's eligibility for pension benefits: "Employees who retire under the J.I. Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that plan, *will be eligible* for the benefits described in this section." *See id.* at CASELLC07461. As well, this section further provides: "Except where noted, the benefits and maximums under these *continued* coverages *will be the same as those that were in effect on the day preceding your retirement . . .*" *See id.* (emphasis added).[15]

Even if the parties' intent were not clear based on the express language of the various labor agreements, Plaintiffs present substantial extrinsic evidence to demonstrate that the UAW and Case intended to provide retirees and surviving spouses fully funded, lifetime health insurance benefits. Darla Clark, who was employed by Case at its Terre Haute plant from January 1967 until the plant closed in 1987, met with plant employees applying for retirement. *See* Pls.' Exhibits, Vol. I, Ex. A(6). Ms. Clark states that she told retiring employees "that their medical insurance benefits

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[15] Further on, this section provides that "The cost of this coverage is fully paid by the Employer." *See* Case LLC Exhibits, Vol. III, Ex. 19 at CASELLC07463.

would continue unchanged for their lifetime, and if an employee's spouse had a survivor pension benefit, the spouse would have the same medical insurance benefits for his or her lifetime." *See id.* ¶ 5.

Ms. Clark also provides a letter C.J. Devine, Case's Director of Benefits & Practices, sent retirees in 1971, outlining the group medical insurance benefits for which retirees and their surviving spouses were eligible. *See id.* Ex. E to Aff. Explaining their health care benefits in a question and answer format, Mr. Devine states that "Retirees and Surviving Spouses, age 65 or older, are not required to pay a premium, either for themselves or any eligible dependent. Instead the coverage shall be fully paid by the Company." *See id.* In regards to whether a retiree's surviving spouse will be able to keep this coverage, Mr. Devine provides: "If you have elected the Spouse's Optional Form of Pension and your spouse will receive a pension as a result, your spouse will be able to keep this coverage *for the remainder of her lifetime.*" *See id.* (emphasis added).

Prior to Case's closing of its Terre Haute plant in 1987, Ms. Clark explained to hourly employees the various benefits to which they would be entitled under the three options in the Plant Shutdown Agreement. In connection with this discussion, Ms. Clark gave employees a "Benefit Information" sheet and a "Disability Pension Worksheet" prepared by Case's Industrial Relations Department in Terre Haute. *See id.* ¶ 9, Ex. A and Ex. D. These documents reflect that hourly employees who choose to retire are entitled to health insurance benefits "continu[ed] unchanged" "[f]or lifetime." *See id.* Ms. Clark also sent medical insurance cards to employees choosing to retire which contain the words "Lifetime" or "Lifetime Coverage." *See id.* ¶¶ 10 & 11, Ex. C. Ms. Clark's letter accompanying these cards states that the cards "reflect your lifetime coverage." *See id.* Ex. B.

Daryl Moore was the Acting Assistant Labor Relations Manager at Case's Bettendorf facility when the facility closed in 1987. *See* Pls.' Exhibits, Vol. I, Ex. A(27) ¶ 6. Prior to the plant closing, Mr. Moore met with hourly employees at the facility to discuss their options and the benefits provided under these options pursuant to the applicable Shutdown Agreement. According to Mr. Moore, he told "these employees that, in retirement, they would have company paid health care coverage for the rest of their lives and, if they had a spouse who survived them, the spouse would also have fully paid health care coverage for his or her life or until their remarriage." *See id.* ¶ 7. Mr. Moore had the same responsibilities and made the same representations to employees at Case's Rock Island plant prior to its closure in 1987.

Plaintiffs also present through the affidavit of Paula Castillo, the surviving spouse of former Case employee Jose Castillo, a summary of retirement benefits that Case provided Mr. Castillo prior to his retirement. *See* Pls.' Exhibits, Vol. I., Ex. A(5). This summary states that Mr. Castillo and his wife are entitled to full health insurance coverage and that if he pre-deceased his wife, her coverage "would continue as before" and only would terminate if she remarried. *See id.*, Att. Under a section entitled "Spouse's Benefits," the summary Mr. Castillo received further provides: "In the event that you should die before your spouse and a spouse's option was spplied [sic] for, she will receive 55% of your pension for her lifetime along with the insurance which was mentioned previously." According to Ms. Castillo, when she accompanied Mr. Castillo to Case's benefit office prior to his retirement in order to present evidence of their marriage, a benefits representative confirmed that she would be entitled to the benefits set forth in the summary. *See id.*, ¶ 6.

Plaintiffs present affidavits of numerous other retirees and surviving spouses who state that benefit representatives told them that they would receive post-retirement lifetime health

insurance coverage, fully paid for by the company. *See*, Pls.' Exhibits, Vol. I, Ex. A. Some of these affiants provide documentation they or their spouse (where the affiant is a surviving spouse) received from Case. In these documents, Case specifically promises retirees and their surviving spouses fully funded health insurance coverage for their lifetime. *See, e.g., id.*, Exhibits A(17), (20), (25), (26), and (32).

Plaintiffs also provide a transcript of a meeting Karen Hamilton, Case's Benefits Coordinator, held at the company's Racine Plant in 1991 for employees considering the Early Retirement Incentive Program. *See*, Pls.' Exhibits, Vol. I, Ex B. During her presentation, Ms. Hamilton told employees that if they opted into the program, they would "retain all the same group insurance that you have right now if you're retiring with 10 years of service or more." *See id.* at 17. One attendee asked Ms. Hamilton "what happens to the spouse's medical insurance if the retiree passes away?" *See id.* at 25. Ms. Hamilton responded, "As long as the spouse is receiving a pension check, the spouse is entitled to group insurance coverage unless they remarry." *See id.*

Defendants present other extrinsic evidence to show that Case and the UAW did not intend to create specific lifetime health insurance benefits for retirees and their surviving spouses. Specifically, Defendants refer to the FAS-106 Letter, arguing that the UAW's willingness to agree to the cap is "powerful evidence" that it did not believe that Case was obligated to provide fully funded health insurance for the lifetime of its retirees. Defendants also note that during the negotiations between Case and the UAW with respect to the letter, the UAW requested that retiree health insurance benefits be described as "lifetime" benefits, thereby suggesting that there was no previous agreement for such benefits to vest. *See* El Paso App., Vol. II, Ex. 14(F).

Defendants also refer to the following language in the VEBA Agreement between Case LLC and the UAW:

> WHEREAS, El Paso's liability to pay medical benefits to Pre-IPO retirees and their dependents and Surviving Spouses and their dependents is limited according to a formula calculated annually based upon the per capita cost of El Paso's medical plan for Pre-IPO Retirees and Surviving Spouses . . .

*See* El Paso App., Vol. III, Ex. 40 at UAW1468. Defendants argue that the UAW's willingness to include this language in the agreement demonstrates that it recognized in 1998 that retiree health insurance benefits were terminable and mutable. Finally, Defendants present the testimony of Case's chief union negotiator, Paul Crist, and its former Director of Employee Benefits, Tim Haas, who state that it was the company's understanding that retiree health care benefits lasted only as long as the Central Agreement in effect and thus were not fixed or perpetual. *See* Crist Dep. at 17; Haas Dep.[16]

The Court does not believe that the UAW's and Case's intent when they executed the Central Agreements and Group

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[16] Defendants also refer to a December 1971 letter Mr. Devine sent to retirees in which he indicates that some surviving spouses will have to pay premiums to obtain health insurance coverage. *See* Case App., Vol. IV, Ex. 50. Mr. Devine in fact does state that some retirees and surviving spouses, those under age 65, will have to pay a premium; however, this is due to the fact that the Central Agreements prior to 1974 only provided full coverage for retirees over age 65. Starting in 1974, Case agreed to pay the entire cost of health care benefits for employees who retired, regardless of their age. Defendants also claim that Case and the UAW agreed to modify health insurance benefits for retirees over the years. Defendants fail to point to any decrease in benefits for retirees; however, there was an increase in their co-payment for brand name prescriptions. Courts have found retiree health care benefits vested despite evidence of such changes. *See Helwig v. Kelsey-Hayes*, 857 F.Supp. 1168, 1174 n. 2 (E.D.Mich.1994); *Schalk v. Teledyne, Inc.*, 751 F.Supp. 1261, 1266-67 (W.D.Mich.1990).

Insurance Plans from 1971 through 1990 is made clearer by language in agreements executed several years later by the UAW and Case LLC, particularly as Case's representations to its employees prior to 1998 reflect a different intent. Furthermore, the UAW's intent in 1998 is irrelevant if it lacked the authority to reduce health care benefits for already retired employees and their surviving spouses. The Supreme Court has made clear that unions cannot negotiate reductions in retirees' vested benefits without the retirees' consent. *See Chem. Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n. 20, 92 S.Ct. 383, 30 L.Ed.2d 341 (1971); *see also, Maurer*, 212 F.3d at 918.

In this Court's opinion, the UAW's request to add "lifetime" language to the FAS-106 Letter does not necessarily mean that the union's representatives believed that the earlier agreements did not provide vested health care benefits. The representatives may have been attempting to more clearly state what they believed earlier agreements provided, particularly where the "agreement" at issue established other limitations on those benefits. Finally, neither Mr. Crist's nor Mr. Haas' testimony is entitled to considerable weight. Mr. Crist is still employed by Case LLC. Mr. Haas serves as a consultant to Case LLC, receiving $20,000 per month in consulting fees from the company.

For the reasons set forth above, the Court finds based on the evidence presently before it that Plaintiffs are likely to succeed on the merits. Plaintiffs, therefore, have met the first requirement for a preliminary injunction.

V. *Whether Plaintiffs Will Suffer Irreparable Harm Without the Injunction*

Plaintiffs present affidavits from numerous retirees and surviving spouses, most of whom are living on limited, fixed incomes. These affiants state that they lack the funds to contribute $501 per month to retain their health care cover-

age.[17] Many of these retirees and surviving spouses suffer serious health care problems and are required to take a number of expensive prescription drugs. Already having lost their health care benefits, some retirees and surviving spouses, such as Edward Ewell, state that they have stopped taking some of their medications, as they cannot afford them. One surviving spouse, Evelyn Corey, has been breaking her prescription pills in half to stretch her supply. Other retirees and surviving spouses have limited their visits to their doctors or have been unable to undergo treatment.

El Paso acknowledges that some Plaintiffs are being harmed, perhaps irreparably. Citing *Adams v. Freedom Forge Corp.*, 204 F.3d 475 (3d. Cir.2000), however, El Paso argues that such a showing is insufficient to demonstrate class-wide irreparable harm. In *Adams,* the Third Circuit vacated a preliminary injunction granted by the district court because only 11 of the approximately 136 plaintiffs (retirees and surviving spouses) set forth evidence to establish that they were threatened with irreparable harm when their former employer proposed a modification of their health care coverage. Under the employer's proposal in *Adams,* retirees under age 65 would be switched to new coverage and would be required to pay a portion of their premiums (ranging from $30 to $90). Retirees over age 65 would be able to choose between two different plans: (1) a plan with no premium payments, but a $10 co-payment per prescription and a $1250 annual limit for drug prescriptions or (2) a plan with monthly premiums ranging from $20 to $40, a $10 to $20 co-payment per 30-day supply of prescription drugs, and drug benefits limited to $2500 per year.

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[17] The UAW is paying to continue health care benefits for a handful of retirees and surviving spouses where the retirees were UAW employees when (or in some cases after) they retired from Case. The Court does not find that these exceptions negate an overall showing of irreparable harm.

The present matter is distinguishable from *Adams* in that Plaintiffs are required to contribute *$501 per month* to maintain *any* of their retiree health care benefits. While Plaintiffs only present the affidavits of 34 retirees and surviving spouses, the Court can surmise that the putative class members overall cannot afford to contribute such an amount until this case is resolved. Unable to afford the $501 premium, Plaintiffs will lose their health care insurance, will not be able to pay for necessary prescription medications, and will not receive all the medical care they need. Reimbursing Plaintiffs for their contributions at the end of the case, therefore, will not afford them relief.

Defendants also argue that Plaintiffs' delay in seeking injunctive relief negates their claim of irreparable harm. While El Paso initially informed retirees and surviving spouses that they would need to pay a premium to maintain their health care coverage in late 1997, Case immediately sent a letter to retirees and surviving spouses indicating that it would pay their premium through 1998.[18] El Paso only informed retirees and surviving spouses in August 2002 that the VEBA Trust had been exhausted and they now would be required to contribute $290 per month. At that time, Plaintiffs and the UAW initiated a lawsuit; however, Plaintiffs and the UAW voluntarily dismissed that suit before an answer was filed when the UAW determined that it should not be named as a plaintiff due to a conflict of interest. In December 2002, El Paso notified retirees and surviving spouses that their contribution was being increased to $501 per month starting January 2003. Plaintiffs immediately filed this lawsuit and, three months later, filed their motion for preliminary injunction. Under these circumstances, Plaintiffs' delay does not negate a showing of irreparable harm, particularly given the

[18] The contribution El Paso first requested from retirees and surviving spouses additionally was minimal.

information Plaintiffs needed to gather in order to file their motion.

VI. *Whether Granting the Injunction Will Cause Substantial Harm to Others*

Defendants maintain that they will be irreparably harmed if they are required to pay the full cost of health care benefits for the putative class, consisting of 3700 members based on Plaintiffs' estimate, during the pendency of this lawsuit. The Court recognizes that if Defendants are ultimately successful, they will have suffered substantial damage as a result of the preliminary injunction. However, the Court must balance this potential harm against the potential harm to Plaintiffs if the preliminary injunction is not granted. Defendants have paid the full costs of health care benefits for retirees and their surviving spouses for years prior to August 2002, and in this Court's opinion, the financial impact on Defendants being required to continue to pay these benefits is far less than the financial burden which would be placed on Plaintiffs if their request for a preliminary injunction is denied.

VII. *The Impact of the Injunction on the Public Interest*

ERISA provides a policy "to protect the interests of participants in employee benefit plans . . . by providing for appropriate remedies, sanctions, and ready access to the Federal Court." 29 U.S.C. § 1001(b). The LMRA favors enforcement of CBAs so as to protect the contractual rights of employees and employers. Plaintiffs contend that the public interest favors issuance of an injunction as ERISA and the LMRA strongly favor the protection of rights guaranteed employees by welfare benefit plans that are part of CBAs. Defendants argue that issuance of a preliminary injunction will thwart the public interest in enforcing the terms of CBAs, as they argue that Plaintiffs only can prevail by evading the terms of their CBAs. As the Court concludes that the terms of the relevant labor agreements entitle Plaintiffs to fully

funded, lifetime health care benefits, Defendants' argument fails and the Court finds that the public interest will be served by the issuance of an injunction.

VIII. *Breadth of the Court's Injunction*

Defendants argue that Plaintiffs' request for an injunction is overbroad, as health care benefit levels for retirees and their surviving spouses varied under the Central Agreements. Effective with the 1971 Central Agreement, however, retirees over age 65 have not been required to pay any premium for their retiree health care coverage. The only change over the years in retiree insurance benefits has been the expansion of coverage for example, the inclusion of vision care coverage and the addition of a hearing aid plan. Plaintiffs merely ask the Court to require Defendants to pay the full cost of the health care benefits they were previously receiving. Defendants only will be required to continue or resume providing the same insurance coverage to Plaintiffs that they were entitled to receive before El Paso required a premium.

Defendants also argue that an injunction should not extend to those employees who retired after October 3, 1993, the date the FAS-106 Letter became effective and thus arguably capped Case's retiree health insurance obligations. At this time, the Court is not convinced that the FAS-106 Letter was merely for accounting purposes and that the UAW and Case therefore did not intend for it to limit Case's obligations to provide future retirees' health care benefits. Thus employees who elected to retire after that date are not entitled to a preliminary injunction. However the Court finds this alleged "cap" ineffective with respect to employees who chose to retire prior to October 3, even if their retirement went into effect after that date, and with respect to employees who elected a Voluntary Lay-Off option prior to the FAS-106 Letter's effective date, but who only "grew into" retirement after that date.

Finally, Defendants contend that those employees who retired pursuant to Shutdown Agreements or Early Retirement Incentive Programs signed release documents barring them from filing claims against Defendants for any benefits. *See, e.g.*, Pls.' Exhibits, Vol. III, Ex. U at CASELLC 02143; Case LLC's Exhibits, Vol. III, Ex. 22 at EM00764. The releases expressly state, however, that the retirees retained the right to bring any claims arising from those agreements.[19]

IX. *Whether El Paso and/or Case LLC is Liable for Plaintiffs' Health Insurance Benefits*

Case LLC has filed a cross-claim against El Paso for breach of contract, contending that El Paso, as Tenneco's successor, is solely responsible for the cost of Plaintiffs' health care benefits. In its Response to Plaintiffs' motion for preliminary injunction, El Paso argues that it assumed liability for pre-IPO retiree health care subject to negotiated limits specifically the cap set forth in the FAS-106 Letter. According to El Paso, Case retained liability for retiree health care costs above the cap, the costs at issue in this lawsuit.

Having reviewed the Reorganization Agreement and the Benefits Agreement, the Court finds that El Paso, as Tenneco's successor, is primarily liable for the entire health care

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[19] For example, the Waiver and Release executed by employees retiring pursuant to the 1993 Shutdown Agreement provides:

> In consideration of said sums and other benefits in this Shutdown Agreement, the undersigned hereby waives, releases, and forever discharges the Company and/or the Union from any and all obligations, claims, causes of action, liabilities, grievance or arbitration claims . . . arising out of or related to facts or events occurring prior to the execution of this waiver and release regarding the employment relationship . . . *except those claims which are based on alleged violations of this Shutdown Agreement* . . .

*See* Case LLC's Exhibits, Vol. III, Ex. 22 at EM00764-EM00765.

costs for pre-IPO retirees and their surviving spouses. Article III, Section 3.02(c) of the Reorganization Agreement and Section 7.2.2 of the Benefits Agreement provide that Tenneco assumes, with certain limitations, the "Retained Liabilities," which specifically are defined to include Case's liabilities for post-retirement health insurance benefits for pre-IPO retirees and their dependents. Contrary to El Paso's claim, nothing in either agreement limits Tenneco's liability for retiree health insurance benefits to the costs below the alleged cap established in the FAS-106 Letter. Section 7.2.4 limits Tenneco's liability for any costs resulting from any action of Case Equipment *after* the date of the Benefits Agreement. As the section further provides as an example, any increase in the cost of benefits that result from any agreement by Case Equipment "to *increase or otherwise modify the per capita annual cost limits* set forth in [the FAS-106 Letter]." The costs of pre-IPO retirees' and surviving spouses' fully funded health care benefits have not arisen as a result of any action by Case Equipment *after* the Reorganization and Benefits Agreements were executed.

Case, however, has not been released from its liability to provide fully funded, lifetime health insurance benefits to its retirees and their surviving spouses. Thus despite Tenneco's assumption of this liability, Case remains responsible to Plaintiffs for the cost of these benefits. Case LLC argues that it is a distinct corporation from Case and therefore is not liable for these costs. At this time, the Court cannot determine whether the two corporations are in fact distinct or whether the 1994 reorganization merely left Case as a shell corporation and shifted its business to a "new" company with a temporarily different name.

The Court therefore concludes that El Paso is liable for the full costs of the pre-IPO retirees' and surviving spouses'

health insurance benefits. The Court may subsequently conclude that Case LLC also is liable for these costs.[20]

X. *Defendants' Request for a Security Bond*

Rule 65(c) of the Federal Rules of Civil Procedures provides:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

FED. R. CIV. P. 65(c). It is within the Court's discretion to determine the amount of security to be given by Plaintiff for an injunction. *USACO Coal Co. v. Carbomin Energy, Inc.*, 689 F.2d 94, 100 (6th Cir.1982). However the Court may require no security at all, as the Sixth Circuit, unlike several other circuits, holds that the requirement of Rule 65(c) is not mandatory. *Roth v. Bank of Commonwealth*, 583 F.2d 527, 538 (6th Cir.1978)(citing *Urbain v. Knapp Bros. Manuf. Co.*, 217 F.2d 810 (6th Cir.1954)). As the *Roth* court held ". . . it was error for the judge, not necessarily to have failed to require a bond in any particular amount, but to have failed to exercise the discretion required of him by Rule 65(c) by expressly considering the question of requiring a bond." *Id.*

In considering whether to require a plaintiff to give security and, if so, the amount of that security, the Court must balance the interests of the plaintiff and the defendant. As the Sixth Circuit explained in *USACO Coal,* "[t]he purpose of a security deposit . . . is to protect the party injured from damage occasioned by the injunction." *Id.* That purpose,

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[20] Article V of the Reorganization Agreement contains an indemnification provision, requiring either defendant to indemnify the other defendant for failure to comply with its obligations under the agreement.

however, must be weighed against the hardship that a bond would impose upon the plaintiff and the diminishing impact such a requirement would have on the relief obtained. Balancing those interests, some courts have required a nominal bond; however, it is this Court's view that a nominal bond is merely a formality which will not provide any meaningful protection to El Paso for the costs and damages occasioned by the preliminary injunction.

Defendants claim that paying fully funded health care benefits for pre-IPO retirees and their surviving spouses will cost in excess of $1.8 million per month. Thus Defendants seek a bond of at least $6 million. Plaintiffs ask the Court to impose a "modest bond," as the district courts required in such similar cases as *Schalk v. Teledyne, Inc.*, 751 F.Supp. 1261, 1269 (W.D.Mich.1990)(requiring $50,000 bond, although defendant claimed monthly cost of retiree insurance benefits to be $90,000), *Golden v. Kelsey-Hayes Co.*, 845 F.Supp. 410, 416-17 (E.D.Mich.1994)(requiring $100,000 bond despite defendant's estimated cost of $160,000 per month to provide retiree insurance benefits), and *Helwig v. Kelsey-Hayes Co.*, 857 F.Supp. 1168, 1181 (E.D.Mich.1994)(requiring $95,000 bond where defendant claimed monthly cost of $150,000 to provide retiree insurance benefits). *See also Hinckley v. Kelsey-Hayes Co.*, 866 F.Supp. 1034, 1046 (E.D.Mich.1994)(imposing bond of $55,000, although defendant estimated insurance benefits for retirees to cost $87,000 per month); *Fox v. Massey-Ferguson, Inc.*, 172 F.R.D. 653, 681 (E.D.Mich.1995)(imposing bond of $95,000, although monthly insurance benefits claimed to cost $150,000).

Clearly Plaintiffs and members of the putative class are incapable of providing security in an amount close to either of the figures Defendants cite. As their affidavits indicate, a great number of these individuals depend upon their pension benefits and/or payments from Social Security as their sole source of income. Thus the Court finds that Plaintiffs lack

any meaningful funds to post a substantial bond.[21] The Court, however, believes that something more than a "nominal" bond should be required as a condition of Plaintiffs obtaining this injunction because of the cost to Defendants if Defendants ultimately prevail. Therefore, the Court shall order Plaintiffs to post a bond in the amount of $50,000 as a condition of obtaining the preliminary injunctive relief they seek.

An Order consistent with this Opinion shall issue.

*ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION*

Plaintiffs brought this lawsuit on behalf of retirees and surviving spouses of retirees, seeking fully funded, lifetime health care benefits from Defendants. Plaintiffs filed a motion for preliminary injunction on March 21, 2003. For the reasons set forth in an Order issued this date,

*IT IS ORDERED*, that Plaintiffs' motion for preliminary injunction is *GRANTED*;

*IT IS FURTHER ORDERED*, that upon the posting of a $50,000 security bond by Plaintiffs, Defendant El Paso Tennessee Pipeline Company shall resume paying the full costs of health insurance benefits for retirees and surviving spouses of retirees who retired from Case prior to October 3, 1993.

This Order shall remain in effect until further of this Court.

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[21] If Defendants can identify a source of funds available to Plaintiffs to post a larger bond, they may request a "bond hearing." However such request will not delay the effective date of this preliminary injunction. The preliminary injunction is effective upon Plaintiffs' posting of the required bond.

**APPENDIX C**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed May 9, 2006]

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Nos. 04-1182/1818/1821/2492

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GLADYS YOLTON, ET AL.,
*Plaintiffs-Appellees*,

v.

EL PASO TENNESSEE PIPELINE COMPANY,
*Defendant-Appellant* (04-1821/2492),

CASE CORPORATION, NOW KNOWN AS CNH AMERICAN, LLC,
*Defendant-Appellant* (04-1182/1818).

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BEFORE: MARTIN, COLE, and GILMAN, *Circuit Judges*.

ORDER

The court having received two petitions for rehearing en banc, and the petitions having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petitions for rehearing have been referred to the original panel.

The panel has further reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. Accordingly, the petitions are denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

FILED
OCT 5 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-201

IN THE

# Supreme Court of the United States

EL PASO TENNESSEE PIPELINE CO.,
*Petitioner,*

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED AND CNH AMERICA LLC,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. Whether this Court should decline to review the interlocutory decision of the Sixth Circuit which involves the application of traditional principles of contract interpretation in a Section 301 breach of contract action.

II. Whether this Court should decline to review the interlocutory decision when there is no disagreement among the Circuits as to the basic principles of contract interpretation applicable to a Section 301 breach of contract action for retiree health care benefits.

## PARTIES TO THE BRIEF

This Brief in Opposition is filed by Respondents Gladys Yolton, Wilbur Montgomery, Elsie Teas, Robert Betker, Edward Maynard, Gary Halsted. In this Brief, these Respondents are referred to as the Plaintiffs.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED | i |
| PARTIES TO THE BRIEF | ii |
| TABLE OF AUTHORITIES | v |
| STATEMENT OF THE CASE | 1 |
| A. The Collective Bargaining Agreements | 1 |
| B. The Reorganization | 4 |
| C. The Dispute | 4 |
| D. The District Court's Preliminary Injunction | 5 |
| E. The Sixth Circuit's Decision on Interlocutory Appeal | 6 |
| REASONS FOR DENYING THE WRIT | 6 |
| A. This Petition Involves an Interlocutory Appeal | 6 |
| B. There is No Split Among the Circuits | 7 |
| 1. El Paso's Reading of Ten Outcome Determinative "Rules" Demonstrates Only That the Results Below are Dictated by the Unique Facts of Each Case | 8 |
| a. The Circuits Agree on the Appropriate Application of the Extrinsic Evidence Rule | 9 |
| b. The Circuits Agree That No Automatic Presumptions Apply | 11 |
| c. The Effect of Specific Words or Phrases | 13 |
| i. El Paso's "Will Continue" Argument | 14 |

TABLE OF CONTENTS—Continued


| | Page |
|---|---|
| ii. El Paso's Pension Linkage Argument .. | 16 |
| iii. El Paso's Durational Clause Argument ..... | 18 |
| 2. Retiree Claims are Frequently Rejected Within the Sixth Circuit and Frequently Prevail in Other Circuits ..... | 18 |
| C. The Sixth Circuit's Preliminary Decision Raises No Issues of Importance and Does Not Conflict With Any Federal Policy ..... | 20 |
| CONCLUSION ..... | 21 |

# TABLE OF AUTHORITIES

CASES — Page

*Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90 (2d Cir. 2001) ..... 19
*Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) ..... 20
*American Construction Co. v. Jacksonville T. & K.R. Co.*, 148 U.S. 372 (1893) ..... 6
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*Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993) ..... 9, 10, 15, 20
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*Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984) ..... 9
*Cherry v. Auburn Gear, Inc.*, 441 F.3d 476 (7th Cir. 2006) ..... 10, 20
*Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996) ..... 19
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TABLE OF AUTHORITIES—Continued

Page

*Golden v. Kelsey-Hayes Co.*, 954 F.Supp. 1173 (E.D. Mich. 1997) ..... 17
*Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251 (1916) ..... 7
*Joyce v. Curtiss-Wright Corp.*, 992 F. Supp. 259 (W.D.N.Y. 1997), *aff'd* 171 F.3d 130 (2d Cir. 1999) ..... 16, 17
*Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60 (4th Cir. 1989) ..... 7, 10
*LaForest v. Former Clean Air Holding Co.*, 376 F.3d 48 (2d Cir. 2004) ..... 7
*Litton Financial Printing* v. *N.L.R.B.*, 501 U.S. 190 (1991) ..... 20
*Local 150-A, Food & Commercial Workers v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985) ..... 9
*Machinists v. Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997) ..... 9, 10, 11
*Maurer v. Joy Technologies, Inc.*, 212 F.3d 907 (6th Cir. 2000) ..... 11, 12, 19
*McCoy v. Meridian Automotive Systems, Inc.*, 390 F.3d 417 (6th Cir. 2004) ..... 9, 12, 16, 17
*Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995) ..... 19
*Pabst Brewing Co. v. Corrao*, 161 F.3d 434 (7th Cir. 1998) ..... 19
*Paperworkers v. Champion International Corp.*, 908 F.2d 1252 (5th Cir. 1990) ..... 10
*Rossetto v. Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000), *cert denied*, 531 U.S. 1192 (2001) .... 10, 11, 19
*Senior v. NSTAR Electric & Gas Corp.*, 449 F. 3d 206 (1st Cir. 2006) ..... 11, 13

TABLE OF AUTHORITIES—Continued

Page

*Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993) ..... 14, 15, 19
*Steelworkers v. Connors Steel Co.*, 855 F.2d 1499 (11th Cir. 1988), *cert. denied sub nom H.K. Porter Co. Inc., v. Steelworker*, 489 U.S. 1096 (1989) ..... 7, 10
*Steelworkers v. Textron, Inc.*, 836 F.2d 6 (1st Cir. 1986) ..... 7
*Stewart v. KHD Deutz of America, Corp.*, 980 F.2d 698 (11th Cir. 1993) ..... 9, 10, 14, 16, 19
*Teamsters Welfare Fund v. Rolls-Royce Motor Cars, Inc.*, 989 F.2d 132 (3d Cir. 1993) ..... 10
*UAW v. Cadillac Malleable Iron Co.*, 728 F.2d 807 (6th Cir. 1984) ..... 13
*UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (N.D. Ohio 1983), *aff'd* 1984 U.S. App. LEXIS 13700 (6th Cir. 1984) (unpublished opinion) ..... 19
*UAW v. BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000) ... 12, 14
*UAW v. Roblin Industries, Inc.*, 561 F. Supp. 288 (W.D. Mich. 1983) ..... 19
*UAW v. Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999) ..... 9, 10, 14
*UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) ..... 12, 13
*Vallone v. CNA Financial Corp.*, 375 F.3d 623 (7th Cir.), *cert. denied*, 543 U.S. 1021 (2004) ... 16, 17
*Virginia Military Institute v. United States*, 508 U.S. 946 (1993) ..... 7
*Zielinski v. Pabst Brewing Co.*, ___ F.3d ___, 2006 WL 2567468 (7th Cir. 2006) ..... 19

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES

Page

Ossi, *It Doesn't Add Up: The Broken Promises of Lifetime Health Benefits, Medicare and Accounting Rule FAS 106 Do Not Equal Satisfactory Medical Coverage for Retirees*, 13 J. of Contemp. Health L. & Policy 233 (1996) ..... 3

IN THE

# Supreme Court of the United States

No. 06-201

EL PASO TENNESSEE PIPELINE CO.,
*Petitioner,*

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, GARY HALSTED AND CNH AMERICA LLC,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## STATEMENT OF THE CASE

### A. The Collective Bargaining Agreements

Beginning in 1970, Tenneco Corporation (now El Paso) was the parent and sole shareholder of Case Corporation (now CNH America LLC), a manufacturer of farm and construction equipment.[1] Pet. 2a.

[1] Case was known as J.I. Case Company prior to 1990 when it changed its name to Case Corporation. Pet. App. 40a. In 2004, Case changed its name to CNH America LLC.

Case and the UAW were parties to a series of collective bargaining agreements (CBAs) which included Group Insurance Plans (GIPs) addressing benefits for various categories of employees as well as retirees and their surviving spouses. Pet. App. 3a.

In 1971, Case agreed to pay the entire cost of health care benefits for retirees and surviving spouses over age 65 beginning January 1, 1972. Pet. App. 42a. The GIPs contained a section entitled: "Provisions Applicable to Employees Retired on Company Pension and Surviving Spouses Receiving Company Pension." That section provided that Case "shall pay the full premium cost of [health care] coverages" for "Employees who retire under the J I Case Pension Plan for Hourly Paid Employees, or their surviving spouses eligible to receive a spouse's pension under the provisions of that Plan . . . ." Pet. App. 41a-42a.

In a December 30, 1971 letter, Case's Benefits Manager explained these benefits to retirees: "Retirees and Surviving Spouses, age 65 or older, are not required to pay a premium, either for themselves or any dependent. Instead, the coverage shall be fully paid by the Company." In response to the question: "Will my spouse be able to keep this coverage if I pass away?" he answered: "*If you have elected the Spouse's Optional Form of Pension and your spouse will receive a pension as a result, your spouse will be able to keep this coverage for the remainder of her lifetime. . . .*" (emphasis added). Pet. App. 58a.

In the 1974 negotiations, Case extended fully paid coverage to retirees and surviving spouses regardless of age. The language of the GIPs relating to retiree health care benefits remained substantially unchanged from 1974 to 1990. Pet. App. 42a.

In 1987, Case and the UAW negotiated a Plant Shutdown Agreement for the Rock Island, Bettendorf and Terre Haute

plants. The Shutdown Agreement provided enhanced retirement options which included retiree health care benefits. The Shutdown Agreement described "hospitalization/medical insurance" (as well as retiree life insurance and pensions) as "vested residual rights." Pet. App. 43a.

The CBA, at Article XVI, Section 4 contained the following two provisions:

> 4A. The insurance plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement.
>
> . . .
>
> 4C. The pension plan agreed to between the parties will run concurrently with this Agreement and is hereby made part of this Agreement. Pet. App. 3a.

Case's benefit representatives at the various plants consistently informed retirees verbally and in writing that they would have unchanged, fully paid health care benefits for their lifetimes and that their surviving spouses would also have lifetime health care benefits. Pet. App. 57a-60a.

On November 5, 1993, Case Corporation and the UAW initialed an Extension Agreement to extend the 1990 CBA through February 5, 1995. Section 9 of the Extension Agreement, entitled "FAS 106 Out-Year Cost Limiters,"[2] refers to a "Letter of Agreement" that the cost to the company of providing benefits to retirees after April 1, 1998 would not exceed a specified dollar amount. Pet. App. 44a-45a.

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[2] FAS 106 is an accounting standard promulgated by the Financial Accounting Standards Board requiring companies to report post-retirement health care obligations on their financial statements on an accrual basis. Companies used various methods to reduce the FAS 106 figure. *See* Ossi, *It Doesn't Add Up: The Broken Promises of Lifetime Health Benefits, Medicare and Account-ing Rule FAS 106 Do Not Equal Satisfactory Medical Coverage for Retirees*, 13 J. of Contemp. Health L. & Policy 233 (1996).

**B. The Reorganization**

In 1994, Case Corporation was a still wholly owned subsidiary of Tenneco Corporation. Pet. App. 40a. In early 1994, Tenneco's Board of Director's decided to "reorganize" to facilitate a public offering of its "equity interests in Tenneco's farm and construction equipment business . . ." (defined as the "Case Business"). CNH Pet. App. 82a.[3] The Reorganization Agreement was between Tenneco, Case Corporation and a new corporation (Case Equipment Corporation) that Tenneco incorporated for that purpose. Pet. App. 2a-3a, 45a-47a. Tenneco assigned all of the Case Business to Case Equipment except for Tenneco's ownership of Case stock, certain demand notes and subordinated debt and certain Retained Assets and the Retained Liabilities. Pet. App. 2a-3a. In the Employee Benefit and Compensation Allocation Agreement, ("Allocation Agreement"), Tenneco assumed Case's post-retirement health and life insurance obligations (the "Retained Liabilities") for pre-reorganization retirees. Case Equipment "assumed" the existing CBAs including the 1990 CBA under which many Plaintiffs retired. Pet. App. 5a-6a, CNH Pet. App. 84a.

At 12:01 a.m. on July 1, 1994, Case Corporation changed its name to Tenneco Equipment Corporation. One minute later, Case Equipment Corporation changed its name to Case Corporation. CNH Pet. App. 83a. Thereafter, Tenneco began paying the full cost of the plaintiff's health care benefits. Pet. App. 6a.

**C. The Dispute**

In 1996, Tenneco merged with El Paso. Pet App. 47a. In October 1997, El Paso notified retirees that they had to pay

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[3] El Paso did not include the district court's post- December 31, 2003 orders in its Appendix. As to these orders, Plaintiffs will cite to CNH's Petition Appendix as CNH Pet. App. __.

$56 a month for their health care coverage beginning April 1, 1998. Pet. App. 7a. In November 1997, Case Corporation notified retirees and surviving spouses that it would pay this contribution through the end of 1998. Pet. App. 49a. During the 1998 negotiations with the UAW, Case Corporation agreed to fund a VEBA trust to pay health care contributions for pre-reorganization retirees. Pet. App. 49a. In August 2002, when VEBA funds were exhausted, El Paso informed retirees that they would have to pay $290 per month for their health care benefits. Pet. App. 49a. In October 2002, Plaintiffs sued Case and El Paso. Pet. App. 49a.

In September 2002, Case Corporation changed its name to Case, LLC. Pet. App. 40a. In January 2004, Case, LLC changed its name to CNH America LLC. CNH Pet. App. 91a.

**D. The District Court's Preliminary Injunction**

On December 31, 2003, the district court granted Plaintiffs' motion for preliminary injunction. It concluded that, based on the express language of the GIP, retirees were entitled to lifetime health care benefits. Pet. App. 53a-57a. The court then found that "[e]ven if the parties' intent were not clear based on the express language of the various labor agreements," there was substantial extrinsic evidence confirming Case's intent to provide fully paid lifetime health care benefits. Pet. App. 57a-60a. The court further concluded that El Paso, as Tenneco's successor, had assumed Case's obligation to provide the benefits. CNH Pet. App. 67a-69a.

On March 9, 2004, the court granted El Paso's motion for reconsideration, concluding that it had "overlook[ed] the fact that, as the signatory to the CBAs, Case LLC retained liability for Plaintiffs' health care costs despite El Paso's subsequent assumption of those liabilities . . . ." CNH Pet. App. 80a. On September 3, 2004, the district court granted summary judgment for CNH on its indemnity cross-claim against El Paso. Pet. App. 30a.

### E. The Sixth Circuit's Decision on Interlocutory Appeal

On January 17, 2006, the Sixth Circuit affirmed, concluding that the district court had not abused its discretion in issuing the preliminary injunction. The Sixth Circuit also affirmed the March 9, 2004 decision that Case was directly liable to the retirees and the September 3, 2004 decision granting summary judgment for Case on its indemnification cross claim.

## REASONS FOR DENYING THE WRIT

Nothing about this interlocutory decision is worthy of review by this Court. The Sixth Circuit simply determined that the district court did not abuse its discretion in making a preliminary determination, based on those facts then available, that Plaintiffs were likely to ultimately prevail.

The district court engaged in a preliminary, garden-variety exercise in contract interpretation. This dispute will ultimately require examination of CBAs going back three decades and the facts surrounding the negotiation and administration of those CBAs before there can be a final determination of the intent of the parties. Because CNH claimed below that it did not sign the CBA's, the ultimate resolution of this case will also require a detailed factual inquiry into Case's corporate history, Tenneco's 1994 reorganization and the operations of the entities involved.

These issues still to be decided, by definition, present fact-specific questions. The final outcome is not foreordained by the preliminary rulings of the courts below. Moreover, there is no conflict in the Circuits. The petition should be denied.

### A. This Petition Involves an Interlocutory Appeal

This Court has long disfavored the grant of *certiorari* with respect to interlocutory decisions. *American Construction Co. v. Jacksonville T. & K.R. Co.,* 148 U.S. 372, 384 (1893);

*Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916) (*certiorari* should be granted as to interlocutory decisions only in "extraordinary" cases).

As the cases cited by CNH in its parallel Petition illustrate, this Court has generally found interlocutory decisions "extraordinary" only when they involve fundamental constitutional rights. CNH Opp. 7-8.[4]

There is nothing extraordinary about this case. The district court issued a preliminary injunction requiring the continuation of health care coverage while the action below continues, as courts have often done. *See e.g. Steelworkers v. Textron, Inc.*, 836 F.2d 6 (1st Cir. 1986); *LaForest v. Former Clean Air Holding Co.*, 376 F.3d 48 (2d Cir. 2004); *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 61 (4th Cir. 1989); *Steelworkers v. Connors Steel Co.*, 855 F.2d 1499, 1500 (11th Cir. 1988), *cert denied sub nom H.K. Porter Co., Inc., v. Steelworkers*, 489 U.S. 1096 (1989). As the Sixth Circuit noted below: "As the injunction issued by the district court is a preliminary injunction, the defendants may continue to press their arguments below . . . ." Pet. App. 20a. After a final decision is rendered, either party can then petition for a review of all issues that turn out to be, in fact, dispositive. *See Virginia Military Institute v. United States*, 508 U.S. 946 (1993).

### B. There is No Split Among the Circuits

El Paso barely mentions the Sixth Circuit's interlocutory decision below in its arguments for *certiorari* review of that decision. As set forth above, the decision below is a routine decision affirming a preliminary injunction and therefore inappropriate for review by this Court. Putting this dispositive point aside, Plaintiffs show below that there is no

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[4] References to Plaintiffs' Opposition to CNH's Petition will be shown as "CNH Opp. _____."

split among the Circuits with respect to the analytical framework by which collectively bargained retiree health care disputes are decided.

El Paso canvasses dozens of Circuit decisions in an effort to show a substantive conflict. El Paso seizes on any factual similarity between a case in which an employer prevailed and one in which the employer did not and pronounces a conflict based on those results. As shown below, El Paso's "conflicts" evaporate on even a cursory review of the cases.

### 1. El Paso's Reading of Ten Outcome Determinative "Rules" Demonstrates Only That the Results Below are Dictated by the Unique Facts of Each Case

El Paso posits ten conflicting and outcome determinative "rules" it believes can be extracted from various Circuit decisions in retiree health care disputes over the last twenty-five years. Pet. 9-16, 18-21. In fact, as set forth in the Opposition to CNH Petition, the Circuits are in substantial agreement on the analytical approach in these cases.

The rules El Paso would read into various Circuit decisions involving retiree health care disputes are so numerous that repeating them would not be useful here, except to note that they involve: 1) consideration of extrinsic evidence; 2) whether the contractual analysis should begin with a presumption for or against vesting; and 3) whether certain specific words in a

CBA operate to vest benefits or not.[5] As we show below, there is no Circuit conflict on any of these points.

### a. *The Circuits Agree on the Appropriate Application of the Extrinsic Evidence Rule*

El Paso asserts that the Circuits disagree about when extrinsic evidence can be admitted in retiree health care disputes. Pet. 9. To the contrary, the Circuits which have addressed this question have all recognized and applied the centuries-old rule that extrinsic evidence may be considered to resolve ambiguities in a written contract.[6] Because of the fact dependent

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[5] El Paso also argues that the Circuits disagree on how to analyze retiree plans that are not the product of collective bargaining. Pet. 13. This case involves a collectively bargained plan and is not, therefore, a vehicle for reviewing the analytical tools in examining unilaterally created benefit plans. Respondents note in passing, however, that unilateral plans—unlike collectively bargained plans—typically grant discretionary interpretive authority to the employer, resulting in arbitrary and capricious review of the employers' interpretation of plan language regarding vesting. See *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). In contrast, the typical retiree health care dispute arising out of collectively bargained plans is subject to de novo review.

[6] *See UAW v. Skinner Engine Co.*, 188 F.3d 130, 142-146 (3d Cir. 1999); *Machinists v. Masonite Corp.*, 122 F.3d 228, 233 (5th Cir. 1997) ("Because the agreements are ambiguous, the district court should have considered extrinsic evidence of intent"); *McCoy v. Meridian Automotive Systems, Inc.*, 390 F.3d 417, 422 (2004) ("When ambiguities exist . . . the court may examine extrinsic evidence of the parties' intent."); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993) (directing consideration of extrinsic evidence where contractual terms were inconclusive); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989) ("[I]f the contract is deemed ambiguous, then the court may weigh extrinsic circumstances to aid in its construction," *quoting Local 150-A, Food & Commercial Workers v. Dubuque Packing Co.*, 756 F.2d 66, 69 (8th Cir 1985) with approval); *Bower v. Bunker Hill Co.*, 725 F.2d 1221, 1224 (9th Cir. 1984); *Stewart v. KHD Deutz of America, Corp.*, 980 F.2d 698, 702 (11th Cir. 1993) ("Once it is established that the contract is ambiguous, . . . extrinsic evidence is admissible to explain that ambiguity").

nature of these cases, courts have almost always found it necessary to examine extrinsic evidence to determine whether the parties to a CBA intended to establish vested benefits.[7] In unusual cases courts have found that written language unambiguously promises retirees vested health care,[8] or clearly does not.[9] There is simply no disagreement on the application of this fundamental principle.

El Paso asserts that the Third Circuit, in *UAW v. Skiner Engine Co.*, 188 F.3d 130 (3d Cir. 1999), held that the traditional extrinsic evidence rule does not apply in retiree health care disputes. Pet. 9. In fact, the *Skinner* panel explicitly confirmed that it *does* apply. The court stated that a contract clause is ambiguous when it is subject to reasonable alternative interpretations and that "[r]eference must often be made to the 'contract language, the meanings suggested by counsel, and the extrinsic evidence offered in support of each interpretation.'" 188 F.3d at 142, *quoting Teamsters Welfare Fund v. Rolls-Royce Motor Cars Inc.*, 989 F.2d 132, 133 (3d Cir. 1993). The *Skinner* court found the retiree health care "will continue" language presented in that case unambiguous, however, only after examining prior contracts that indicated the "will continue" language did not address duration, but whether there had been a change in benefits from the previous contract. 188 F.3d at 142-143. In fact, in *Skinner*, the court

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[7] See *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 64 (4th Cir. 1989); *Machinists v. Masonite Corp.*, 122 F.3d at 233; *Paperworkers v. Champion International Corp.*, 908 F.2d 1252, 1261 (5th Cir. 1990); *Bidlack v. Wheelabrator Corp.*, 993 F.2d at 609-610 ; *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 546-547 (7th Cir. 2000); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1518 (8th Cir. 1988), *cert. denied sub nom Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989); *Stewart v. KHD Deutz of America, Corp.* 980 F. 2d at 703.

[8] See *Steelworkers v Connors Steel Co.*, 855 F.2d 1499, 1504 (11th Cir. 1988); *Diehl v. Twin Disc, Inc.*, 102 F.3d 301, 307 (7th Cir. 1996).

[9] See *Barnett v. Ameren Corp.*, 436 F.3d 830, 835 (7th Cir. 2006); *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 483-486 (7th Cir. 2006).

stated that extrinsic evidence could have changed the result. Thus, the court stated that the "out-come of this case would no doubt be different" if the company's former CEO had testified that, in agreeing to include the phrases "will continue" and "shall remain" in the CBA, the company intended that language to mean that retiree benefits were vested. *Id.* at 147. See also *infra* at 14-15, and CNH Opp. 16.

### b. *The Circuits Agree That No Automatic Presumptions Apply*

El Paso next argues that the Circuits disagree as to whether an automatic presumption for or against vesting should be applied in resolving retiree health care disputes. This issue has long been laid to rest. All Circuits to address the issue agree that no automatic presumption should apply.[10] El Paso nevertheless argues that the Seventh Circuit applies an automatic presumption that retiree health care benefits are not vested and that the Sixth Circuit applies a presumption that benefits are vested. Pet. 11. As the Circuit decisions show, neither assertion is correct.

In the Seventh Circuit, as Judge Posner observed in *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 544 (7th Cir. 2000), *cert. denied*, 531 U.S. 1192 (2001), a presumption would arise only in the atypical situation where a contract contains *no* language that could reasonably be construed to vest retiree benefits:

> Our presumption against vesting, it is important to emphasize, kicks in only if all the court has to go on is

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[10] *Maurer v. Joy Technologies, Inc.*, 212 F.3d 907, 917 (6th Cir, 2000) (no presumption for vesting); *Machinists v. Masonite Corp.*, 122 F.3d 228, 231 (5th Cir. 1997) (no presumption against vesting); *Senior v. NSTAR Electric & Gas Corp.*, 449 F. 3d 206, 217 (1st Cir. 2006)(no presumption for or against vesting); *Rosetto v. Pabst Brewing Co.*, 217 F.3d 539, 544 (7th Cir. 2000)(same); *Bazzone v. Automotive Industries Welfare Fund*, 860 F.2d 1088, 1988 WL 58340 *4 (9th Cir. 1988) (unreported decision)(recognizing *Yard-Man* does not create a presumption)

> silence. . . . The presumption is thus a default rule, that is, a rule to be applied when there is no other evidence.

Similarly, since it decided *UAW v. Yard-Man Inc.*, 716 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), the Sixth Circuit has repeatedly stated that it does not apply any presumption in favor of vesting. As the Sixth Circuit stated below:

> El Paso and CNH America misinterpret the term "inference" and confuse it with a legal presumption. Under *Yard-Man* we may *infer* an intent to vest from the context and already sufficient evidence of such intent. Absent such other evidence, we do not start our analysis presuming anything. . . . "[t]here is no legal presumption that benefits vest and that the burden of proof rests on plaintiffs." *Maurer*, 212 F.3d at 917. This Court has never inferred an intent to vest in the absence of either explicit contractual language or extrinsic evidence indicating such an intent. Rather, the inference functions more to provide a contextual understanding about the nature of labor-management negotiations over retiree benefits.

Pet. App. 12a.

Although the Third Circuit in its 1999 *Skinner* decision phrased the Sixth Circuit's position on this issue in terms of a presumption, 188 F.3d at 140 ("We cannot agree with *Yard-Man* that there exists a presumption of lifetime benefits . . ."), there is no longer any doubt that the Sixth Circuit *does not* apply a presumption. The Sixth Circuit has emphasized that no presumption applies three times since *Skinner* was decided —in the decision below, in *Maurer v. Joy Technologies, Inc.*, 212 F.3d 907, 917 (6th Cir, 2000) and in *McCoy v. Meridian Automotive Systems, Inc.*, 390 F.3d 417, 422 (6th Cir. 2004).[11]

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[11] El Paso argues that there is some confusion on this question within the Sixth Circuit by noting that the word "presumption" appears in *UAW*

The First Circuit recognized the settled state of Sixth Circuit law on this question in *Senior v. NSTAR Electric & Gas Corp.*, 449 F. 3d 206, 217 (1st Cir. 2006). It rejected plaintiff's claim that *Yard-Man* created a presumption in favor of vesting, noting that: "In *Yolton*, 435 F.3d 571[(6th Cir. 2006)], the court said: 'All that *Yard-Man* and subsequent cases instruct is that the court should apply ordinary principles of contract interpretation. *Id.* at 580.'"

The *Yard-Man* inference is simply one tool among many used to interpret CBAs.[12] As the Sixth Circuit explained in *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 656 (6th Cir.), *cert. denied*, 519 U.S. 807 (1996):

> the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBAs.

### c. *The Effect of Specific Words or Phrases*

Finally, El Paso attempts to articulate a Circuit conflict by asserting that cases El Paso characterizes as having identical

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*v. BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999). That reference, however, appeared in the court's characterization of a party's argument, not in the panel's articulation of the *Yard-Man* decision. The panel itself clearly stated that *Yard-Man* permitted an "inference," and that "*Yard-Man* does not shift the burden of proof to the employer." 190 F.3d at 772, *quoting Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 656 (6th Cir. 1996), which in turn quoted *UAW v. Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir. 1984), for the proposition that "there is no legal presumption based on the status of retired employees."

[12] In any case, neither the district court nor the Sixth Circuit relied on the *Yard-Man* inference. The Sixth Circuit noted that, while the district court mentioned the inference, its "analysis does not in any sense *rely* on an inference. . . . Instead, the district court interpreted the language of the agreement and found evidence that the defendants intended to confer lifetime benefits upon the plaintiffs." Pet. App. 14a. (emphasis in original).

retiree health care provisions were decided differently by different Circuits. Pet. 18-21. The cited cases actually involve quite different language in different contexts. They are not at all in conflict.

**i. El Paso's "Will Continue" Argument**

El Paso first argues that Circuits differ on whether the words "will continue" automatically vest benefits. The answer from the Circuits, not surprisingly, is that it depends on the factual context. El Paso argues that the Sixth Circuit's decision in *UAW v. BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 529 U.S. 1067 (2000), the Third Circuit's decision in *Skinner*, the Seventh Circuit's decision in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993) and the Eleventh Circuit's decision in *Stewart v. KHD Deutz of America, Corp.*, 980 F.2d 698 (11th Cir. 1993), all adopted conflicting rules with respect to the same retiree health care provisions. A cursory review of the cases shows that the language examined in each of the cases was dramatically different.

In *BVR Liquidating*, the company had agreed, in a prior contract, that retiree health care benefits would be paid for retirees "until death," that is, that the coverage would not continue for surviving spouses after the retiree's death. A subsequent contract expanded the coverage to include surviving spouses and therefore the prior language that terminated coverage at the retiree's death was removed. 190 F.3d at 770 n. 5. The new, more expansive provision stated that the retirees would have coverages "continued for themselves, their spouses, surviving spouses, and eligible dependents." *Id.* After examining the entire contract, including durational clauses, the Sixth Circuit found the language ambiguous, reviewed extrinsic evidence and concluded that the benefits were vested. *Id.* at 774-775.

In *Skinner*, a CBA provided that the company "will continue to provide" medical coverage. 188 F.3d at 135. The

Third Circuit noted, however, that this language had been changed from contract to contract depending on whether the new contract continued previous coverage or changed the previous coverage. If the latter, the contract contained "will be instituted," for example, rather than "will continue." The Third Circuit found, based on this history, that "will continue" referred to whether there had been a change in coverage, not to duration. 188 F.3d at 142-143. The Third Circuit also relied on the fact that the retiree health care language did not specifically mention retirees at all:

> the CBA provisions make no material distinction between active employees and retirees in this regard. The only reasonable conclusion—if one begins with the uncontroversial premise that benefits for active employees were not vested—is that benefits for retirees were likewise not vested.

*Id.* at 144.

After examining other parts of the CBA and, as noted above, extrinsic evidence, the Third Circuit in *Skinner* determined that the contract provisions were not ambiguous and held, based on the particular facts described above, that the benefits were not vested. *Id.* at 147.

El Paso claims that the Seventh Circuit in *Senn* applied yet a third outcome-determinative rule to "will continue" contract language. In fact, as the Seventh Circuit later pointed out in *Bidlack v. Wheelabrator*, 993 F.3d at 608, the language in *Senn* did not merely say that retiree benefits "will continue:"

> The language in *Senn* was weaker: it was that the company "will continue for retired employees" a specified premium contribution. And the final agreement between the company and the union in that case, which could be thought declaratory of earlier understandings, said that coverage "shall be continued *during the term of this agreement.*"

The other case cited by El Paso in support of its "will continue" argument, *Stewart v. KHD Deutz of America, Inc.*, 980 F.2d 698 (11th Cir. 1988), did not involve "will continue" language at all. Rather, the contract provided that coverage "shall be provided . . . during retirement." 980 F.2d at 701-702. Because the contract also contained a reservation of rights clause, the Eleventh Circuit found it ambiguous and remanded for consideration of extrinsic evidence. *Id.* at 703-704.

As the Circuit decisions cited by El Paso above show, neither the Sixth Circuit, in *BVR Liquidating*, nor the Third, Seventh or Eleventh Circuits based their decisions on a myopic reading of a two-word phrase such as "will continue." Rather, all the Circuits to address collectively bargained retiree health care disputes have applied traditional rules of contract interpretation to the unique facts of each case.[13]

**ii. El Paso's Pension Linkage Argument**

El Paso next asserts that two Sixth Circuit decisions, *Golden v. Kelsey-Hayes, supra*, and *McCoy v. Meridian Automotive Systems, supra*, were decided differently than two decisions El Paso claims had identical governing documents —the Second Circuit's decision in *Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130 (2d Cir. 1999) and the Seventh Circuit's decision in *Vallone v. CNA Financial Corp.*, 375 F.3d 623 (7th Cir.), *cert. denied*, 543 U.S. 1021 (2004).

Again, a review of the facts shows that these decisions turned on very different written provisions. The decisions are not at all inconsistent.

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[13] See CNH Opp. 13-20.

In *Golden*, the court articulated—as one factor[14]—that the CBA provided that retirees were eligible for health care benefits if they were eligible for a company pension. 73 F.3d at 656. The court in *McCoy* addressed similar provisions—and additional extrinsic evidence—and reached the same result. 390 F.3d at 423-424.

In *Joyce* and *Vallone*, the courts rejected vesting claims because explicit reservation of rights clauses gave the employers the right to modify their benefits. In *Joyce*, the Second Circuit rejected a vesting argument where a summary plan description given to retirees specifically stated that their retiree medical benefits "are of a contractual nature, and they may be modified from time to time or terminated as a result of contractual negotiations."[15] 171 F.3d at 132. In *Vallone*, the Seventh Circuit examined a plan unilaterally promulgated by the employer. The plan documents contained a reservation of rights provision which stated that the retiree coverages "may be amended, revoked, or suspended at the Company's discretion at any time, even after your retirement." 375 F.3d at 636.[16]

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[14] The Sixth Circuit in *Golden* also relied on many other facts as well, including language in the SPDs and the fact that the company continued to provide retiree health care long after it sold the facilities in question. *Golden*, 73 F.3d at 656-57. The district court subsequently found a "veritable mountain of evidence" to support its finding that retiree health care benefits had vested. *Golden v. Kelsey-Hayes Co.*, 954 F. Supp. 1173, 1187-88 (E.D. Mich. 1997).

[15] See *Joyce v. Curtis-Wright Corp.*, 992 F. Supp. 259, 263-263 (W.D. N.Y. 1997), setting forth factual details.

[16] The Seventh Circuit's *Vallone* decision was also based on the court's finding that the plan documents granted the company discretion in interpreting the plan, and that the company's interpretation must therefore be upheld unless it was arbitrary and capricious, as held in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). 375 F.3d at 631-632. This grant of discretion is typical of unilaterally-promulgated benefit plans and rare in collectively bargained plans. Collectively bargained

### iii. El Paso's Durational Clause Argument

El Paso notes that an Eighth Circuit case interpreted a durational clause as being inconsistent with vesting, and argues that this decision is inconsistent with the Sixth Circuit's determination in the decision below that a general durational clause in the Case CBAs did not preclude vesting. Pet. 20-21. The two decisions are not at all inconsistent. In *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1987), cited by El Paso, the CBA specifically provided that *retiree* insurance coverage could be "amended, modified or supplemented in collective bargaining between the parties." The Eighth Circuit therefore decided those benefits could be modified. 836 F.2d at 1514-1515. The general durational clause examined by the Sixth Circuit below is dramatically different. That clause merely provides that the insurance plan would run concurrently with the CBA. Unlike the durational clause in *Anderson*, the general durational clause examined by the courts below does not mention retirees and contains no statement that retiree benefits could be modified by subsequent negotiations. Pet. App. 13a-14a. It is simply not possible to conjure a conflict between the decision below and the Eighth Circuit's decision in *Anderson*.

## 2. Retiree Claims are Frequently Rejected Within the Sixth Circuit and Frequently Prevail in Other Circuits

El Paso seeks to extract outcome-determinative rules from a variety of factually distinct cases. As shown above, the Circuits have not applied any such rules, but have applied traditional rules of contract interpretation to widely disparate factual situations. The absence of any outcome-determinative

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retiree disputes, therefore, are typically reviewed under a de novo standard under which the employer and retiree interpretations of applicable retiree health care provisions are entitled to equal weight.

rules is further demonstrated by noting that retirees frequently fail in the Sixth Circuit[17] and frequently prevail in other Circuits.[18]

El Paso argues that a substantive split must exist because retirees have prevailed more often in Sixth Circuit decisions than in Seventh Circuit decisions. Pet. 15 n.5. As the cases cited by El Paso in support of this argument show, however, a majority of the Sixth Circuit cases, due to geographical realities, arose out of auto industry contracts, with their own distinct patterns and history.[19] In contrast the Seventh Circuit cases arise out of a more diverse group of industries—brewery,[20] electrical,[21] steel,[22] and

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[17] *See e.g. UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (N.D. Ohio 1983), *aff'd* 1984 U.S. App. LEXIS 13700 (6th Cir. 1984) (unpublished opinion); *Bittinger v. Tecumseh Products Co.*, 83 F. Supp.2d 851 (E.D. Mich. 1998), *aff'd* 201 F.3d 400 (6th Cir. 1999); *Maurer v. Joy Technologies,Inc.*, 212 F.3d 907, 919 (6th Cir. 2000)(summary judgment against certain retirees); *UAW v. Roblin Industries, Inc.*, 561 F. Supp. 288 (W.D. Mich. 1983).

[18] *See e.g. Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90 (2d Cir. 2001); *Diehl v. Twin Disc, Inc.*, 102 F.3d 301 (7th Cir. 1996); *Rossetto v. Pabst Brewing Co., Inc.* 217 F.3d 539, (7th Cir. 2000); *Chiles v. Ceridian Corp.* 95 F.3d 1505 (10th Cir. 1996) and *Stewart v. KHD Deutz of America, Inc.*, 980 F.2d 698 (11th Cir. 1993).

[19] *See e.g. UAW v. Cleveland Gear Corp.*, 1983 WL 2174 (N.D. Ohio 1983), *aff'd* 1984 U.S. App. LEXIS 13700 (6th Cir. 1984) (unpublished opinion); *Bittinger v. Tecumseh Products Co.*, 83 F. Supp.2d 851 (E.D. Mich. 1998), *aff'd* 201 F.3d 400 (6th Cir. 1999); *Maurer v. Joy Technologies,Inc.*, 212 F.3d 907, 919 (6th Cir. 2000)(summary judgment against certain retirees); *UAW v. Roblin Industries, Inc.*, 561 F. Supp. 288 (W.D. Mich. 1983).

[20] *See Zielinski v. Pabst Brewing Co.*, __ F.3d __, 2006 WL 2567468 (7th Cir. 2006); *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000); *Pabst Brewing Co. v. Corrao*, 161 F.3d 434 (7th Cir. 1998).

[21] *Barnett v. Ameren Corp.*, 436 F.3d 830 (7th Cir. 2006).

[22] *Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995); *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992).

auto,[23] each with its own pattern and history. The difference in results reflects the differences in the industry contracts, not any substantive difference in the applicable legal standards.

### C. The Sixth Circuit's Preliminary Decision Raises No Issues of Importance and Does Not Conflict With Any Federal Policy

El Paso argues that crucial issues of national importance are at stake in this case. Pet. 21-25. But, as described above, and in Plaintiffs' Brief in Opposition to CNH's Petition, the decision below was a routine preliminary injunction decision which applied ordinary, hornbook principles of contract construction.[24]

El Paso's assertion rests on its claim that different Circuits have applied conflicting outcome-determinative rules. As shown above and in the CNH Opposition Brief, however, all Circuits are in agreement on the traditional rules of contract construction to be applied in resolving collectively bargained retiree health care disputes wherever they arise.

El Paso proposes, in effect, that all courts should abandon traditional contractual analysis, which seeks to determine the intent of the parties to CBAs, and instead adopt an outcome-determinative rule regardless of what the evidence as to the parties' intent actually is.[25] El Paso cites *Litton Financial*

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[23] *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993); *Diehl v. Twin Disc., Inc.*, 102 F.3d 301 (7th Cir. 1996); and *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476 (7th Cir. 2006).

[24] El Paso, like CNH, claims that the alleged "conflict" exacerbates the "evil of forum shopping." Pet. 24-25. Putting aside the fact that Plaintiffs, UAW, its witnesses and voluminous documents are within the forum chosen, El Paso, like CNH, never before complained about the venue which it acknowledges was properly selected by Plaintiffs.

[25] El Paso also cites this court's decision in *Allis-Chalmers Corp. v Lueck*, 471 U.S. 202 (1985), which held that federal law, rather than state, applies to disputes arising out of collective bargaining agreements. That

*Printing* v. *N.L.R.B.*, 501 U.S. 190 (1991) in support of this proposal. Pet. 9-10. The *Litton* decision, to the contrary, endorses the traditional approach to contractual interpretation adopted by the Circuits in retiree health care cases arising under a CBA. *Litton* addressed the question of whether a dispute (unrelated to retiree health care) which arose after the termination of a CBA was arbitrable under that agreement's grievance procedure. In *Litton,* the Court stated that whether rights continue beyond the termination of a CBA is "determined by contract interpretation. Rights which accrued or vested under the agreement, will, as a general rule, survive termination of the agreement." 501 U.S. at 207.

All Circuits are in accord.

## CONCLUSION

For the reasons set forth above, El Paso's request for review should be denied.

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proposition is uniformly accepted by all Circuits and the company does not attempt to show otherwise.

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No. 06-201

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IN THE

# Supreme Court of the United States

EL PASO TENNESSEE PIPELINE CO.,

*Petitioner,*

v.

GLADYS YOLTON *et al.*,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

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TABLE OF CONTENTS


| | Page |
|---|---|
| TABLE OF AUTHORITIES | ii |
| INTRODUCTION AND SUMMARY OF ARGUMENT | 1 |
| I. REVIEW IS FULLY WARRANTED HERE | 1 |
| II. THERE IS A CLEAR AND PERSISTENT CONFLICT AMONG THE CIRCUITS | 4 |
| A. Circuits Disagree As To Whether Extrinsic Evidence Is Admissible To Prove The Parties' Intent When The Agreement Is Silent | 5 |
| B. The Sixth Circuit Continues To Give Legal Effect To The Much-Disputed *Yard-Man* Inference | 7 |
| C. Circuits Give Flatly Inconsistent Interpretations To Identical Contractual Language | 8 |
| CONCLUSION | 10 |

TABLE OF AUTHORITIES

CASES Page

*Am. Fed'n of Grain Millers* v. *Int'l Multifoods Corp.*, 116 F.3d 976 (2d Cir. 1997) ..... 5
*Amoco Prod. Co.* v. *Vill. of Gambell*, 480 U.S. 531 (1987) ..... 4
*Anderson* v. *Alpha Portland Indus., Inc.*, 836 F.2d 1512 (8th Cir. 1988) ..... 10
*Bidlack* v. *Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993) ..... 7
*Bldg. & Constr. Trades Council* v. *Assoc. Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993) ..... 4
*Bower* v. *Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984) ..... 5
*Dep't of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125 (2002) ..... 4
*El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473 (1999) ..... 4
*Fed. Power Comm'n* v. *Panhandle E. Pipe Line Co.*, 337 U.S. 498 (1949) ..... 4
*Frisby* v. *Schultz*, 487 U.S. 474 (1988) ..... 3
*Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469 (1963) ..... 4
*Gateway Coal Co.* v. *United Mine Workers of Am.*, 414 U.S. 368 (1974) ..... 4
*Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148 (1964) ..... 3
*Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 126 S. Ct. 1211 (2006) ..... 4
*Graham* v. *Bhd. of Locomotive Firemen & Enginemen*, 338 U.S. 232 (1949) ..... 4
*Helwig* v. *Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996) ..... 8
*Imperial County, Cal.* v. *Munoz*, 449 U.S. 54 (1980) ..... 4

TABLE OF AUTHORITIES – continued

Page

*Int'l Union, United Auto. Workers* v. *Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999) ..... 5, 6, 8, 9

*Int'l Union, United Auto. Workers of Am.* v. *BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999) ..... 8, 9

*Joyce* v. *Curtiss-Wright Corp.*, 171 F.3d 130 (2d Cir. 1999) ..... 5, 9

*KVOS, Inc.* v. *Assoc. Press*, 299 U.S. 269 (1936) ... 4

*Leedom* v. *Int'l Union of Mine Workers*, 352 U.S. 145 (1956) ..... 4

*Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957) ..... 4

*Mazurek* v. *Armstrong*, 520 U.S. 968 (1997) ..... 3

*McCoy* v. *Meridian Auto. Sys., Inc.*, 390 F.3d 417 (6th Cir. 2004) ..... 9

*Musto* v. *Am. Gen. Corp.*, 861 F.2d 897 (6th Cir. 1988) ..... 6

*Rossetto* v. *Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000) ..... 5, 6

*Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951) ..... 4

*Sears Roebuck & Co.* v. *San Diego County Dist. Council of Carpenters*, 436 U.S. 180 (1978) ..... 4

*Senior* v. *NSTAR Elec. & Gas Corp.*, 449 F.3d 206 (1st Cir. 2006) ..... 5

*United Paperworkers Int'l Union* v. *Champion Int'l Corp.*, 908 F.2d 1252 (5th Cir. 1990) ..... 5

*United States* v. *Gen. Motors Corp.*, 323 U.S. 373 (1945) ..... 3

*Vallone* v. *CAN Fin. Corp.*, 375 F.3d 623 (7th Cir.), *cert. denied*, 543 U.S. 1021 (2004) ..... 9

TABLE OF AUTHORITIES

SCHOLARLY AUTHORITY — Page

Robert L. Stern et al., *Supreme Court Practice* (8th ed. 2002) ..... 2

## INTRODUCTION AND SUMMARY OF ARGUMENT

As shown in the petition, this Court should grant certiorari to resolve the deep-seated conflict among the circuits over the proper legal standard for determining whether collectively-bargained retiree health-care benefits are vested for life. As the *amicus* brief of the Chamber of Commerce, *et al.* reveals, this question is critically important to employers and employees throughout the nation, and the conflict among the circuits contravenes Congress's express policy favoring uniform interpretation of collective bargaining agreements.

Respondents urge this Court to deny the petition for two reasons: the appeal is interlocutory and the circuits are in accord. The first reason is true, but unpersuasive; the second is simply wrong. First, this case is a perfect exemplar of the type of case in which the Court grants interlocutory review. The petition presents a clear-cut legal issue that cannot be affected by factual development; the legal question is important; the judgment below subjects petitioner to immediate adverse consequences; and the Court's ruling will establish the framework under which the courts below must proceed. Second, respondents' failed attempt to explain away the evident circuit split vainly seeks to disguise critical distinctions in the cases and to characterize the courts' flatly conflicting interpretations of identical contractual language as meaningless. As numerous courts recognize, see *infra* at 5, the circuits are in irreconcilable, result-determinative conflict.

### I. REVIEW IS FULLY WARRANTED HERE.

Respondents first argue that the petition should be denied because the appeal is interlocutory. Beyond labeling the decision "interlocutory," however, respondents fail to show that the issue presented does not warrant review under Supreme Court Rule 10. Nor do they identify any interest that would be served by delaying its adjudication. The reason for respondents' silence is evident: Each factor that this Court has traditionally found to support review when an order is interlocutory is present here.

As the preeminent treatise of Supreme Court practice has summarized,

> where . . . there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status—particularly if the lower court's decision is patently incorrect and the interlocutory decision, such as a preliminary injunction, will have immediate consequences for the petitioner.

Robert L. Stern et al., *Supreme Court Practice* § 4.18, at 259 (8th ed. 2002). Similarly, "the interlocutory status of the case [is] no impediment to certiorari where the opinion of the court below has decided an important issue, otherwise worthy of review, and Supreme Court intervention may serve to hasten or finally resolve the litigation." *Id.* at 260.

All of these factors are present here. First, the petition presents a clear-cut issue of law. Petitioner seeks review only of the *legal standard* that the Sixth Circuit applies in determining whether retiree health-care benefits are vested. No factual question still to be adjudicated has any bearing on this issue. In deciding the question presented, the only relevant "fact" will be the undisputed language of the collective bargaining agreements. In short, the question presented is a pure issue of law and is fully ripe for review.

Second, as demonstrated in the petition and brief of *amici curiae*, the question presented is recurring and exceedingly important.[1] Pet. 21-25, Brief of *Amici Curiae* 15-20. Given the escalating cost of health care, the shrinking ratio of active employees to retirees, and the impact of the global economy on U.S. companies, no issue of federal labor law is more important than the legal rules governing when retiree health-

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[1] Respondents argue that the petition "raises no issues of importance" because "all Circuits are in agreement on the traditional rules of contract construction." Opp. 20 (captialization omitted). As shown *infra*, respondents' claim that no circuit split exists is utterly without merit.

care benefits are vested for life. There is no reason to delay resolution of this important question. Cf. *Frisby* v. *Schultz*, 487 U.S. 474, 479 (1988) ("Because the question presented is of substantial importance, and because further proceedings below would not likely aid our consideration of it, we choose to avoid the finality issue simply by granting certiorari.").

Third, the judgment below has immediate, substantial consequences for petitioner. That decision requires petitioner to pay $1.8 million *per month* in retiree health-care benefits it contends it never agreed to pay. Cf. *Mazurek* v. *Armstrong*, 520 U.S. 968, 975 (1997) (per curiam) (reviewing an order directing the district court to enter a preliminary injunction in part based on its "immediate consequences" for petitioner). In addition, the judgment below imposes upon petitioner a substantial expenditure of funds and resources for a trial – a trial that will be wholly unnecessary if the Court grants the petition and adopts the legal standard petitioner advocates.

Fourth, resolution of the question presented may hasten or resolve the litigation, and will expedite the myriad other cases presenting this issue. If the Court agrees that retiree health-care benefits cannot be deemed vested in the absence of clear language in the collective bargaining agreement, its holding would resolve this litigation. In all events, the Court's opinion would provide fundamental, necessary guidance for the district court on remand (and all district courts addressing this issue in analogous settings) as to what language or extrinsic evidence should inform the vesting decision. Cf. *United States* v. *Gen. Motors Corp.*, 323 U.S. 373, 377 (1945) (engaging in interlocutory review where a ruling would be "fundamental to the further conduct of the case"); *Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148, 153 (1964) (same).

Respondents offer nothing to rebut any of this, instead arguing that the case does not warrant review because it does not involve "fundamental constitutional rights." Opp. 7. But, this Court has never suggested that interlocutory review is reserved only, or even primarily, for cases presenting

constitutional questions. To the contrary, this Court has a long and unbroken practice of reviewing interlocutory appeals presenting important statutory and other nonconstitutional questions.[2] The considerations relevant to the decision whether to grant interlocutory review are those identified above. Here, all factors strongly counsel in favor of granting the petition and addressing the pure legal question presented.

## II. THERE IS A CLEAR AND PERSISTENT CONFLICT AMONG THE CIRCUITS.

Respondents' other argument in opposition – that the circuits are "in substantial agreement" on the standard for determining whether collectively-bargained retiree health-

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[2] *See, e.g.*, *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 126 S. Ct. 1211 (2006) (reviewing affirmance of preliminary injunction); *Dep't of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125 (2002) (reviewing affirmance of preliminary injunction); *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473 (1999) (reviewing affirmance of denial of preliminary injunction and reversal of preliminary injunction); *Bldg. & Constr. Trades Council v. Assoc. Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993) (reviewing order directing entry of preliminary injunction); *Amoco Prod. Co.* v. *Vill. of Gambell*, 480 U.S. 531 (1987) (reviewing order directing entry of preliminary injunction); *Imperial County, Cal.* v. *Munoz*, 449 U.S. 54 (1980) (reviewing affirmance of preliminary injunction); *Sears Roebuck & Co.* v. *San Diego County Dist. Council of Carpenters*, 436 U.S. 180 (1978) (reviewing reversal of preliminary injunction); *Gateway Coal Co. v. United Mine Workers of Am.*, 414 U.S. 368 (1974) (reviewing vacatur of preliminary injunction); *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469 (1963) (reviewing affirmance of denial of preliminary injunction); *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957) (reviewing affirmance of preliminary injunction); *Leedom* v. *Int'l Union of Mine Workers*, 352 U.S. 145 (1956) (reviewing reversal of denial of preliminary injunction); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384 (1951) (reviewing affirmance of preliminary injunctions); *Fed. Power Comm'n* v. *Panhandle E. Pipe Line Co.*, 337 U.S. 498 (1949) (reviewing affirmance of denial of preliminary injunction); *Graham* v. *Bhd. of Locomotive Firemen & Enginemen*, 338 U.S. 232 (1949) (reviewing reversal of preliminary injunction); *KVOS, Inc.* v. *Assoc. Press*, 299 U.S. 269 (1936) (reviewing order directing entry of preliminary injunction).

care benefits are vested – is wholly untenable. Several courts have specifically acknowledged the conflict among the circuits on this issue. See, *e.g.*, *Senior* v. *NSTAR Elec. & Gas Corp.*, 449 F.3d 206, 216 (1st Cir. 2006); *Rossetto* v. *Pabst Brewing Co.*, 217 F.3d 539, 543 (7th Cir. 2000); *Am. Fed'n of Grain Millers* v. *Int'l Multifoods Corp.*, 116 F.3d 976, 980 (2d Cir. 1997). And none of respondents' attempts to paper over this long-standing and well-documented circuit split withstands even cursory scrutiny.

### A. Circuits Disagree As To Whether Extrinsic Evidence Is Admissible To Prove The Parties' Intent When The Agreement Is Silent.

The crux of the circuit split described in the petition is whether extrinsic evidence is admissible to prove the parties' intent when the collective bargaining agreement contains no language regarding vesting. The Second, Third, and Seventh Circuits have clearly answered this question in the negative.[3] Other circuits have just as clearly answered it in the affirmative.[4]

Respondents' answer to this clear circuit split is that all courts have "recognized and applied the centuries-old rule

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[3] *See Joyce* v. *Curtiss-Wright Corp.*, 171 F.3d 130, 135 (2d Cir. 1999) ("We will not infer a binding obligation to vest benefits absent some language that itself reasonably supports that interpretation."); *Int'l Union, United Auto. Workers* v. *Skinner Engine Co.*, 188 F.3d 130, 147 (3d Cir. 1999) ("Silence on duration . . . may not be interpreted as an agreement by the company to vest retiree benefits in perpetuity."); *Rossetto*, 217 F.3d at 547 ("If a collective bargaining agreement is completely silent on the duration of health benefits, the entitlement to them expires with the agreement, as a matter of law . . . .").

[4] *See, e.g., United Paperworkers Int'l Union* v. *Champion Int'l Corp.*, 908 F.2d 1252, 1261 (5th Cir. 1990) ("The agreement itself does not speak to this issue . . . . Therefore, we remand for interpretation of the language of the agreement in light of extrinsic evidence of intent."); *Bower* v. *Bunker Hill Co.*, 725 F.2d 1221, 1223-24 (9th Cir. 1984) (considering extrinsic evidence where "the contractual language [did] not explicitly address the issue" of vesting).

that extrinsic evidence may be considered to resolve ambiguities in a written contract." Opp. 9. This argument misses the point. The question is not whether extrinsic evidence is admissible *to resolve an ambiguity* in the agreement; it is whether extrinsic evidence is admissible where an *unambiguous* agreement is completely *silent* as to vesting. In other words, the question is whether *silence* creates an ambiguity that opens the door for the admission of extrinsic evidence. The Second, Third, and Seventh Circuits correctly hold that it does not.[5]

To divert attention from this decisive distinction, respondents cite cases from the Third and Seventh Circuits that they mistakenly believe show that these circuits allow extrinsic evidence of the parties' intent where the agreement is silent. In so doing, respondents fail to grasp another crucial distinction – that between extrinsic evidence admitted to determine whether an agreement is ambiguous and extrinsic evidence admitted to prove the parties' intent. The Third and Seventh Circuits carefully observe this distinction, allowing extrinsic evidence to show that an agreement is ambiguous, but *disallowing* extrinsic evidence to prove the parties' intent where the agreement is silent.[6]

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[5] For this reason, the extrinsic evidence cited by respondents is legally irrelevant. In addition, the statements were not made by persons negotiating collective bargaining agreements and cannot be interpreted to modify or supersede contract language. *See, e.g., Musto* v. *Am. Gen. Corp.*, 861 F.2d 897, 908-10 (6th Cir. 1988) (citing cases).

[6] *See, e.g., Skinner Engine*, 188 F.3d at 145 ("[T]his court has instructed that extrinsic evidence may be used to determine whether a contract is ambiguous. Extrinsic evidence, however, may not be used to create an ambiguity where none exists.") (internal citations omitted) (emphasis omitted); *id.* at 147 ("Oral testimony certainly may be necessary when the terms of the written document are ambiguous. But when the language itself is not ambiguous, oral testimony may not be used to alter or add terms to a collective bargaining agreement which is otherwise complete."); *Rossetto*, 217 F.3d at 546 (discussing the difference between the limited "objective" evidence admissible to establish an ambiguity and the broader range of evidence admissible to

The cases cited by respondents thus do *not* show that the circuits agree that it is always appropriate to "examine extrinsic evidence to determine whether the parties to a CBA intended to establish vested benefits." Opp. 10. Respondents have identified nothing that casts any doubt on petitioner's showing that the circuits are badly split as to whether extrinsic evidence *of the parties' intent* is admissible where the agreement is silent as to vesting.

### B. The Sixth Circuit Continues To Give Legal Effect To The Much-Disputed *Yard-Man* Inference.

Respondents next argue that the Sixth Circuit does not apply a presumption in favor of vesting. This argument is not responsive to anything in the petition, as petitioner did not argue that the Sixth Circuit employs a formal presumption that benefits are vested. Petitioner's position is, and always has been, that the Sixth Circuit's framework is incorrect, not because it presumes that benefits are vested, but because it allows retirees to prevail where, as here, the agreement contains *no language regarding vesting*.

Moreover, regardless of whether the *Yard-Man* inference can be labeled a "presumption," respondents have nowhere rebutted petitioner's claim that *Yard-Man* continues to cast a long shadow and to have legal effect on the outcome of cases in the Sixth Circuit. As detailed in the petition, and as the Sixth Circuit has explained, the *Yard-Man* inference eliminates the clear statement rule that the court would otherwise apply. Pet. 13-17. It also leads the Sixth Circuit to reach results that are consistently more favorable to retirees than those reached by the circuits that have rejected the *Yard-Man* inference in all of its guises. *Id.* at 15 n.5.

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prove the parties' intent if, but only if, an ambiguity is established); *Bidlack* v. *Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir. 1993) (en banc) ("[T]here must be either contractual language on which to hang the label of ambiguous or some yawning void . . . that cries out for an implied term. Extrinsic evidence should not be used to add terms to a contract that is plausibly complete without them.").

### C. Circuits Give Flatly Inconsistent Interpretations To Identical Contractual Language.

Finally, respondents argue that the collateral "specific language" conflicts set out in the petition are not conflicts at all. Respondents' strategy is to muddy the waters by identifying differences in the factual contexts of the cases. In each case, however, the difference respondents identify is either *incorrect* as a matter of fact or *irrelevant* to the discrete interpretive question giving rise to the circuit split.

*The "will continue" split.* Respondents argue that courts have not given varying interpretations to language stating that employees' benefits "will continue" in retirement. This argument cannot be squared with the cases. For example, in *International Union, United Automobile Workers of America* v. *BVR Liquidating, Inc.*, 190 F.3d 768 (6th Cir. 1999), the Sixth Circuit interpreted an agreement stating that employees' health-care benefits would be "continued for themselves, their spouses, surviving spouses and eligible dependents" during retirement. *Id.* at 770 n.5. The court found that this language unambiguously demonstrated an intent to create lifetime benefits, asking rhetorically, "to what other date than the death of the retiree or the spouse could the word 'continue' apply?" *Id.* at 773. In *Skinner Engine*, the Third Circuit rejected identical reasoning, concluding that the phrase "will continue" "does not *unambiguously* indicate that the benefits will continue *ad infinitum*" because "[a]n equally reasonable interpretation is that the benefits 'will continue until the CBA expires.'" *Int'l Union, United Auto Workers* v. *Skinner Engine Co.*, 188 F.3d 130, 141 (3d Cir. 1999).

Respondents argue that the Sixth and Third Circuits' respective conclusions rested on the drafting history of the particular agreements at issue. This is simply not true. The *BVR* court's analysis of the contract's language never mentioned the drafting history; instead it rested largely on a previous Sixth Circuit case – *Helwig* v. *Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996) – in which the court had concluded

that similar "continuation" language demonstrated an intent to vest benefits. 190 F.3d at 773. Likewise, the *Skinner Engine* court's rejection of the plaintiffs' claim that the language unambiguously vested the benefits was based on a "plain reading" of the language and on the Second Circuit's similar conclusion in *Joyce*. 188 F.3d at 141-42. The court's discussion of the drafting history came only in response to plaintiffs' *alternative* argument that the language, even if not unambiguous, created an ambiguity precluding summary judgment. *Id.* at 142-43.

*The "tying" split.* Respondents argue that there is no conflict between the Sixth Circuit and the Second and Seventh Circuits as to the effect of language tying health-care benefits to pension benefits. Respondents first attempt to downplay the significance of such language in the Sixth Circuit, arguing that it is simply "one factor" the court considers. But, regardless of what other factors the court considers, it clearly accords "tying" language all but dispositive effect. See *McCoy* v. *Meridian Auto. Sys., Inc.*, 390 F.3d 417, 422 (6th Cir. 2004) ("Because the [agreement] ties eligibility for retirement-health benefits to eligibility for a pension . . . there is little room for debate that the retirees' health benefits vested . . . ."). Indeed, the "tying" language was the *only* language identified by either of the courts below that, in their view, addressed vesting.

Respondents next argue that the decisions of the Second and Seventh Circuits are irrelevant because each of the cases involved agreements with a reservation of rights clause. This is obfuscation. Neither court's conclusion that "tying" language is irrelevant to the question of vesting was remotely related to the reservation of rights clause. See *Joyce*, 171 F.3d at 134; *Vallone* v. *CNA Fin. Corp.*, 375 F.3d 623, 633 n.4 (7th Cir.), *cert. denied*, 543 U.S. 1021 (2004).

*The "durational clause" split.* Respondents deny any conflict between the decision below and the Eighth Circuit's conclusion that a clause that limits the duration of an

insurance agreement also limits the duration of the benefits provided thereunder. See *Anderson* v. *Alpha Portland Ind., Inc.*, 836 F.2d 1512, 1519 (8th Cir. 1988) ("It would render the durational clauses nugatory to hold that benefits continue for life even though the agreement which provides the benefits expires on a certain date."). This argument, like the others, is blind to reality. As in *Anderson*, the agreement here contains an explicit clause limiting the duration of the insurance agreement. Thus, there is no escaping the conclusion that the Eighth Circuit would conclude that the decision below renders the durational clause at issue "nugatory." Respondents say that the cases are distinguishable because the agreement in *Anderson* had a clause providing that retiree benefits could be amended. Again, this is true but irrelevant. *Anderson*'s reading of the durational clause was entirely independent of the amendment clause. See *id.* (listing the amendment and durational clauses as the second and third of four independent reasons why the benefits were not vested).

In the end, it is absolutely clear that the circuits are splintered -- with respect to both the general framework governing retiree-benefit cases and the effect of specific language that frequently appears in collective bargaining agreements. Respondents' arguments to the contrary are based on wishful thinking and are demonstrably incorrect.

## CONCLUSION

For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

EL PASO TENNESSEE PIPELINE CO.,
*Petitioner*,

v.

GLADYS YOLTON, WILBUR MONTGOMERY, ELSIE TEAS, ROBERT BETKER, EDWARD MAYNARD, and GARY HALSTEAD, on behalf of themselves and a similarly situated class,
*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE AMERICAN BENEFITS COUNCIL AS *AMICI CURIAE* IN SUPPORT OF EL PASO TENNESSEE PIPELINE CO.


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TABLE OF CONTENTS


| | Page |
|---|---|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF *AMICI CURIAE* | 1 |
| STATEMENT OF THE CASE | 4 |
| SUMMARY OF ARGUMENT | 5 |
| ARGUMENT | 7 |
| I. THE CONFLICT IN THE CIRCUITS REGARDING THE PROPER LEGAL STANDARD FOR DETERMINING THE DURATION OF RETIREE BENEFITS IMPEDES LABOR CONTRACT NEGOTIATION AND UNDERMINES FEDERAL LABOR POLICY | 7 |
| A. The Courts of Appeals Inconsistently Apply or Fail to Apply the *Litton* Presumption. | 8 |
| B. The Protracted Split in the Circuits Has Caused Inconsistent Labor Contract Interpretation | 9 |
| 1. The Circuit Split Has Fostered Unsettled Interpretations of Pension Eligibility Provisions as Implying Lifetime Health Benefits | 10 |
| 2. The Circuit Split Has Fostered Inconsistent Interpretations of Express Durational Provisions For Benefit Programs in Labor Contracts | 11 |
| 3. The Circuit Split Has Impeded the Collective Bargaining Process | 12 |

TABLE OF CONTENTS—Continued

Page

II. THE CONFLICT IN THE CIRCUITS REGARDING THE PROPER LEGAL STANDARD FOR DETERMINING RETIREE BENEFIT DURATION UNDERMINES FEDERAL POLICY UNDER ERISA ..... 13

A. Welfare Benefits Remain Unvested Under ERISA, Given Their Unpredictability Over Time ..... 13

B. The *Yard-Man* Inference Remains Inconsistent with ERISA and Contravenes ERISA's Purpose to Encourage Employers to Provide Benefits Voluntarily ..... 14

III. THE CIRCUIT SPLIT THREATENS THE FINANCIAL HEALTH AND GLOBAL COMPETITIVENESS OF AMERICAN COMPANIES ..... 15

A. The Split Has Forced Work Force Reductions, Exacerbating the Problem of Paying For Escalating Health Care Benefits for Active and Retired Employees and Reducing American Global Competitiveness ..... 16

B. The Split Encourages Forum-Shopping As Companies Face More Stringent Accounting Standards for Post-Retirement Funding Liability ..... 18

CONCLUSION ..... 20

# TABLE OF AUTHORITIES

CASES Page

*Adams v. Avondale Indus., Inc.*, 905 F.2d 943 (6th Cir. 1990), *cert. denied*, 498 U.S. 984 ..... 14

*Am. Fed. of Grain Millers, AFL-CIO v. Int'l Goods Corp.*, 116 F.3d 976 (2d Cir. 1977)..... 11-12

*Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512 (8th Cir. 1988) .....9, 11, 15

*Armistead v. Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991) ..... 9

*Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984)..... 9, 13

*Cherry v. Auburn Gear, Inc.*, 441 F.3d 476 (7th Cir. 2006)..... 8, 10

*Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996)..... 9

*Curtiss-Wright v. Schoonejongen*, 514 U.S. 73 (1995)..... 14

*Golden v. Kelsey Hayes Co.*, 845 F. Supp. 410 (E.D. Mich. 1994)..... 6, 11

*Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996).....9, 10, 11

*Int'l Ass'n of Machinists v. Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997) ..... 9, 15

*Int'l Union, UAW v. Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999) .....8, 10, 15

*Int'l Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983) .....2, *passim*

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TABLE OF AUTHORITIES—Continued

Page

*Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130 (2d Cir. 1999) ..... 8, 10

*Keffer v. H.K. Porter Co.*, 872 F.2d 60 (4th Cir. 1989) ..... 9

*Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190 (1991) ..... 3, 6

*Local 174, Teamsters v. Lucas Flour Co.*, 359 U.S. 95 (1962) ..... 9

*McCoy v. Meridian Auto. Sys. Inc.*, 390 F.3d 417 (6th Cir. 2004) ..... 10

*Moore v. Metropolitan Life Insurance Co.*, 856 F.2d 488 (2d Cir. 1988) ..... 14

*Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995) ..... 13

*Puzis v. Masters Mates and Pilots Plans*, 1989 WL 57657 (9th Cir. May 22, 1989) ..... 10

*Rossetto v. Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000) ..... 8, 15

*Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1265 (W.D. Mich. 1990), *aff'd*, 948 F.2d 1290 (6th Cir. 1991) ..... 6, 11

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*Stewart v. KHD Deutz Corp. of Am.*, 980 F.2d 698 (11th Cir. 1993) ..... 9

*UAW, AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966) ..... 9-10

*United Paperworkers Int'l Union v. Champion Int'l Corp.*, 908 F.2d 1242 (5th Cir. 1990) ..... 12

*Yolton v. El Paso Tenn. Pipeline Co.*, 435 F.3d 571 (6th Cir. 2006) ..... 2, *passim*

TABLE OF AUTHORITIES—Continued

Page

FEDERAL STATUTES

29 U.S.C. § 1053 ..... 13
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Page

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## INTEREST OF *AMICI CURIAE* [1]

The Chamber of Commerce of the United States of America (the Chamber), the world's largest business federation, represents an underlying membership of over three million businesses and organizations of every size, in every industry sector, and from every geographic region of the country. A principal function of the Chamber is to represent the interests of its members by filing *amicus* briefs in cases involving issues of vital concern to the nation's business community.

The National Association of Manufacturers (the NAM) is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

The American Benefits Council (the Council) is a broad-based, non-profit trade association founded in 1967 to protect and foster the growth of this nation's privately sponsored employee benefit plans. The Council's members include both small and large employer-sponsors of employee benefit plans, including many Fortune 500 companies. Collectively, its more than 250 members sponsor and administer plans covering more than 100 million plan participants and beneficiaries.

*Amici's* members and employers have a critical need to know with certainty the scope of employer commitments to provide and pay for health care benefits for their employees

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[1] Pursuant to Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. All parties, including those in a related Petition which may be consolidated with this matter (*CNH Am. LLC. v. Yolton*; Docket No. 06-176), have consented to the filing of this brief. Their consent letters are on file with the Clerk's office.

and their former employees. Many *amici* members provide health care benefits to employees and retired employees and their dependents in several states and arrange for the provision of health care services through employee welfare benefit plans regulated under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 (ERISA). Consistent with federal labor policy under the National Labor Relations Act, 29 U.S.C. §§ 151-169 (NLRA), the Labor-Management Relations Act, 29 U.S.C. § 185a (LMRA), and with this Court's precedents, *amici* members have collectively bargained retiree health care benefits and have attempted to apply labor contract provisions relating to those benefits.

The Sixth Circuit decision below, *Yolton v. El Paso Tenn. Pipeline Co.*, 435 F.3d 571 (6th Cir. 2006) (*Yolton*), employed the much discredited "*Yard-Man* inference," *see Int'l Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983) (*Yard-Man*), in order to infer an unintended lifetime health care benefit for retirees under the parties' collective bargaining agreements. After *Yard-Man*, the circuits divided in their approaches to labor contract interpretation and often interpreted the same or virtually identical labor contract provisions inconsistently. *Yolton* perpetuates this discord. Not only did *Yolton* nullify provisions limiting the existence of the benefit plan to the duration of the labor contract and capping employer contribution to retiree benefits, but it also inferred an employer commitment of lifetime retiree benefits from provisions describing pension eligibility, an approach rejected in several other circuits. The long unresolved split in the circuits has frustrated efforts of *amici* members, and especially their national employer members with operations in several states, to establish a consistent, nationwide approach to retiree benefits. Highly u..settled and inconsistent interpretations of the same or virtually identical labor contract terms have caused this uncertainty, contrary to federal labor and employee benefit law principles.

Despite repeated criticism and rejection of the *Yard-Man* inference by several circuits, the circuits that follow *Yard-Man's* approach infer lifetime benefits and impose an immense and unexpected burden on employers while providing retirees with an unbargained-for windfall. As a result of this outcome-determinative and irreconcilable split in the circuits, forum shopping by retirees and unions has forced American companies, and particularly national employers, to defend contract language at great expense in circuits where a handful of retirees may reside but never worked, and where benefit plans were not in fact negotiated or administered. The enormous funding liability for such unintended lifetime benefits has weakened American companies by forcing them to reduce their active work forces and to cease providing retiree health care benefits for future retirees, contrary to ERISA's policy of encouraging employers to provide benefits voluntarily. American employers have diverted funds from research and development to pay for retiree benefit costs and have been forced to absorb the unexpected and enormous cost of lifetime retiree benefits in the pricing of their products. Some have been driven to the brink of bankruptcy, particularly in industries with significant retiree populations.

*Amici* thus file this brief in support of the petition for certiorari seeking resolution of this deep-seated and unresolved split in the federal circuits. In order to permit U.S. businesses to predict labor costs and to avoid enormous and unintended financial liabilities that weaken their domestic and global competitiveness, *amici* urge this Court to grant the petition for review in order to resolve the split in the circuits by reaffirming a fundamental principle of labor law: the presumption that benefits expire upon contract expiration unless the parties clearly provide otherwise, as this Court recognized in *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 207 (1991). To return the parties to the bargaining table without a presumption that favors one side (the *Yard-Man* inference) and with a presumption consistent with both federal

labor law and ERISA (the *Litton* presumption), this Court should, on plenary consideration, reaffirm that retiree health benefits do not vest unless collectively bargained agreements contain a clear statement that retiree benefits last for life and thus survive labor contract expiration.

## STATEMENT OF THE CASE

*Amici* incorporate the Statement of the Case in the petition for writ of certiorari and briefly summarize the portion of *Yolton* relevant to their arguments.

Petitioner's predecessor (J. I. Case) negotiated a group insurance plan with Respondents' union, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Each collectively bargained labor agreement from 1971 to 1990 contained no express lifetime language in the retiree benefits provision itself, but did expressly provide that the "group insurance plan" (*i.e.*, the source of the retiree health care benefits) would "run concurrently with" the labor agreement, Pet. 3a-4a; thus, when the labor contract expired, so did the benefits. An Extension Agreement, extending most terms of the 1990 labor contract through February 2, 1995, continued to incorporate the group insurance plan and its express provision that the benefit plan only continued concurrently with the labor contract [*Id.*]. The Extension Agreement also stated that "[e]xcept for pension improvements, all wage schedules, pension benefit and insurance levels would remain in effect at the current schedule rates or levels for the term of the Extension Agreement." Pet. 44a.

During the negotiations for the Extension Agreement, the UAW agreed to a Letter of Understanding that expressly provided for a cap on employer contributions to retiree health care benefits as of April 1, 1998. Pet. 4a. Petitioner invoked the cap on employer contributions three times. Pet. 6a-7a.

Respondents challenged the clear and express cap on employer expenditures by suing in the Sixth Circuit, where a few

of the retirees lived, to take advantage of Sixth Circuit law favorable to retirees. By November 1993, petitioner's plants were located only in states in the Seventh and Eighth Circuits. Pet. 24-25. Although *Yolton* claims that the Sixth Circuit does not follow any one-sided presumption in favor of retirees, in all eleven LMRA Section 301 retiree benefit class actions in that Circuit, the court of appeals has found that the retirees' benefits were vested or likely to be vested. Pet. 15, n.5. In contrast, in ten such cases, the Seventh Circuit has found retiree benefits vested for life only once, and only on the basis of clear and express lifetime language. *Id.* The group insurance plan retiree benefit provision did not expressly state that the benefits were lifetime in duration; nevertheless, *Yolton* found, in affirming a preliminary injunction, that the retirees' benefits were likely vested. To reach that result, *Yolton* eviscerated the express duration provision limiting the benefit plan to the term of the labor agreement and effectively erased the negotiated cap on employer contributions to retiree health care benefits. *Yolton* also mischaracterized contract language, given contrary interpretations in other circuits, and applied the now discredited *Yard-Man* inference to find lifetime benefits where none were intended or clearly expressed.

## SUMMARY OF ARGUMENT

Since the controversial *Yard-Man* decision in 1983 that sparked an irreconcilable split in the federal circuits, *amici* members have incurred substantial litigation costs in every one of the federal circuits and have suffered the imposition of lifetime retiree benefits by judicial fiat, even where labor contracts did not expressly promise lifetime retiree benefits. Employers would not, and certainly do not, intend to enter into so costly a commitment as lifetime retiree benefits by silence or ambiguity.[2]

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[2] *Yolton* alone compelled payment of retiree health care benefits costing approximately $1.8 million per month. CNH Pet. 3. To further illustrate, other preliminary injunctions compelled an annualized payment for

The split in the circuits has frustrated federal labor policy and impeded collective bargaining. Reacting to *Yard-Man*, the courts of appeals have followed such diverse approaches to determining the duration of retiree benefits that the law has become a patchwork of unsettled and inconsistent interpretations, sometimes of the same or similar contract language. Some circuits have strayed far from a cardinal principle of federal labor law reaffirmed in *Litton*, 501 U.S. at 207-08, *i.e.*, that obligations expire upon labor contract termination absent a clear statement otherwise, including benefit obligations. The *Litton* presumption should continue to inform the bargaining process because it reflects the realities of that process. Employers can predict the cost of welfare benefits over the life of a labor contract; however, the costs of such benefits defy accurate prediction over decades. Conferring lifetime retiree benefits as did *Yard-Man* and *Yolton* from a presumption that favors one side in collective bargaining contravenes settled federal labor policy.

The *Litton* presumption also comports with ERISA. Aware of the volatile nature of benefit costs, Congress expressly exempted welfare benefits from ERISA's vesting requirements and sought to encourage employers to offer such benefits voluntarily. Because of the immense costs of unintended retiree benefits, employers have now ceased to offer retiree benefits to future retirees, even as the national health care crisis escalates and baby boomers edge toward Medicare eligibility.

Without a resolution of the split in the circuits, retiree benefit litigation will continue to clog federal dockets. The circuit split, combined with the liberal venue provisions of the LMRA and ERISA, has encouraged costly class action litigation as retirees and their unions forum shop to gain a better outcome than they

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such benefits of $1.9 million in 1994 dollars, *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410, 416 (E.D. Mich. 1994), and an annualized payment of $1,080,000 in 1991 dollars, *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261, 1268 (W.D. Mich. 1990), *aff'd*, 948 F.2d 1290 (6th Cir. 1991).

had negotiated at the bargaining table. The unresolved conflict within the federal circuits continues to jeopardize American businesses, which never intended to enter into such enormous long-term liabilities driven by ever-escalating health care costs, and imperils America's global competitiveness.

## ARGUMENT

### I. THE CONFLICT IN THE CIRCUITS REGARDING THE PROPER LEGAL STANDARD FOR DETERMINING THE DURATION OF RETIREE BENEFITS IMPEDES LABOR CONTRACT NEGOTIATION AND UNDERMINES FEDERAL LABOR POLICY.

By adopting a legal rule that presumes the vesting of lifetime retiree benefits, several courts of appeals, including the Sixth Circuit, have imposed on numerous businesses a devastating and immense burden to which those employers never agreed or intended to agree. Rather than ensuring nationwide labor law (as Congress intended), the split in the circuits regarding the proper legal standard for determining the duration of retiree health care benefits has resulted in inconsistencies difficult even to categorize. Petitioner groups the circuits under three different standards for the "vesting" of collectively bargained retiree benefits; CNH puts the count at two circuits following *Yard-Man* and eight rejecting the *Yard-Man* inference. The varied approaches, however the circuits align, have produced irreconcilable interpretations of similar contract provisions, impeding settled and uniform labor contract interpretation and hampering labor contract negotiations, contrary to the LMRA and the NLRA.

*Amici* respectfully request that this Court grant plenary consideration in order to restore clarity to labor contract negotiations in all federal circuits by reaffirming the *Litton* presumption that benefits are not vested and do not survive labor contract termination unless the agreement provides "in

explicit terms that certain benefits continue after the agreement's expiration." 501 U.S. at 207.

### A. The Courts of Appeals Inconsistently Apply or Fail to Apply the *Litton* Presumption.

The federal circuits remain "all over the lot," *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 543 (7th Cir. 2000), and in disarray over whether to apply the *Litton* presumption, the "*Yard-Man* inference" or any presumption when interpreting collectively bargained retiree benefit provisions.

Three circuits (the Second, Third and Seventh) adhere, some expressly and some *sub rosa*, to the *Litton* presumption that benefits expire upon labor contract expiration unless express language provides otherwise. *See Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130, 134-35 (2d Cir. 1999) (rejecting any inference of retiree benefit vesting when the labor agreement is silent on the issue of duration, stating that the documents must contain express language "capable of reasonably being interpreted" as creating a promise to vest benefits, and rejecting plaintiffs' "extensive linguistic contortion[s]" seeking to "manufacture" an ambiguity); *Int'l Union, UAW v. Skinner Engine Co.*, 188 F.3d 130, 139 (3d Cir. 1999) (J. Alito participating) (explicitly requiring a clear statement of vesting beyond labor contract expiration); *Rossetto*, 217 F.3d at 547 (presuming no vesting from silence "unless the plaintiff can show by objective evidence that the agreement is latently ambiguous"); *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 481 (7th Cir. 2006) (finding "[t]he presumption that health care benefits do not exceed the life of an agreement imposes a high burden of proof upon the retirees").

Three circuits (the Sixth, despite its recent protestations otherwise, Fourth and Tenth) follow the completely contrary, much criticized *Yard-Man* inference that retiree benefits vest upon retirement or as deferred compensation; the inference thus "tips the scales" in favor of retirees. *See Yard-Man*, 716

F.2d 1476; *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1297 (6th Cir. 1991); *Keffer v. H.K. Porter Co.*, 872 F.2d 60, 64 (4th Cir. 1989) (discussing the policy behind the "*Yard-Man* inference" approvingly without explicitly adopting it); *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1514 (10th Cir. 1996) (supporting use of *Yard-Man* inference in construing labor contracts, but not ERISA agreements).

Still others (the First, Fifth, and Sixth) claim that they follow no presumption at all. *See Senior v. NSTAR Elec. & Gas Corp.*, 449 F.3d 206, 216-18 & n.16 (1st Cir. 2006); *Int'l Ass'n of Machinists v. Masonite Corp.*, 122 F.3d 228, 231-32 (5th Cir. 1997) (declining to apply the *Yard-Man* inference); *Yolton*, Pet. 12-13a (protesting that the *Yard-Man* inference is not a presumption, but merely another indication of intent confirmed by other factors). Others (the Eighth, Ninth and Eleventh) seem to adopt this approach by resolving cases without employing any presumption. *See Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1516-20 (8th Cir. 1988) ("We believe that it is not at all inconsistent with labor policy to require plaintiffs to prove their case without the aid of 'gratuitous inferences.'"); *Bower v. Bunker Hill Co.*, 725 F.2d 1221, 1223-25 (9th Cir. 1984); *Stewart v. KHD Deutz Corp. of Am.*, 980 F.2d 698, 702 & n.3 (11th Cir. 1993).

### B. The Protracted Split in the Circuits Has Caused Inconsistent Labor Contract Interpretation.

Whatever the reasoning followed in each circuit, one unpleasant reality remains for employers: plaintiffs race to a circuit that follows *Yard-Man* to determine contract interpretation and litigation outcome. Yet this Court has recognized that the realm of labor negotiations and the interpretation of labor contracts calls for uniform law. *Local 174, Teamsters v. Lucas Flour Co.*, 359 U.S. 95, 103 (1962). This Court has also cautioned that "[t]he need for uniformity. . . is greatest where its absence would threaten the smooth func-

tioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it." *UAW, AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696, 702 (1966). Contrary to this goal of federal labor policy that there should arise a federal common law of uniform contract interpretation, the protracted split in the circuits has fostered inconsistent and thus unsettled interpretations of the same or identical labor contract provisions.

**1. *The Circuit Split Has Fostered Unsettled Interpretations of Pension Eligibility Provisions as Implying Lifetime Health Benefits.***

Four circuits reject the Sixth Circuit's insistence that language of description regarding pension eligibility constitutes language of prescription of lifetime health benefits.

*Yolton* followed earlier Sixth Circuit opinions tying the duration of retiree health care benefits to pension eligibility. Pet. App. 13a, 18-19a. *See Golden*, 73 F.3d at 656; *McCoy v. Meridian Auto. Sys., Inc.*, 390 F.3d 417, 422 (6th Cir. 2004). In contrast, the Third Circuit criticized the Sixth Circuit's *Yard-Man* inference, its methodology, and its illogical leap from language of pension eligibility to an intention to vest retiree welfare benefits for life. *See Skinner*, 188 F.3d 130. As here, the labor contracts in *Skinner* did not contain express and clear language that retiree benefits "will continue for life." *Skinner* declined to infer that retiree health benefits vest for life simply because they are supposedly tied to pension eligibility, and pensions last for life. 188 F.3d at 141-142. The Second, Seventh and Ninth Circuits have also declined to elevate mere language of description (a supposed "tie-in" with pension eligibility) to an implied lifetime durational term for retiree benefits. *See Joyce*, 171 F.3d at 135; *Cherry*, 441 F.3d at 484 ("Words that signify a lifetime commitment in a pension plan may not have the same effect in the context of health benefits."); *Puzis v. Masters Mates and Pilots Plans*, 1989 WL 57657 at *2 (9th Cir. May 22, 1989).

**2. *The Circuit Split Has Fostered Inconsistent Interpretations of Express Durational Provisions For Benefit Programs in Labor Contracts.***

*Yolton* also perpetuates the split in the circuits over interpretation of express durational provisions for benefit programs. Unlike other circuits, the Sixth Circuit ignores the distinction between a general duration provision that simply limits the term of the contract and a "specific" duration provision that expressly refers to the benefit program and links its duration to the fixed term of the labor contract.

Recent Sixth Circuit cases mischaracterize durational provisions that expressly and specifically refer to the group insurance programs as "general" durational provisions. Pet. 14a. *See Golden,* 73 F.3d at 656 (citing *Golden,* 845 F. Supp. at 413-15; *Schalk,* 751 F. Supp. at 1265). The durational provisions in the labor contracts in *Yolton* clearly refer to the group insurance program and expressly state that the program "runs concurrently" with the fixed term of the labor contract. Pet. 3a-4a. The Extension Agreement also clearly states that the level of insurance benefits would be provided "during the term of the Agreement." Pet. 4a.

In contrast to the Sixth Circuit, the Eighth Circuit has refused to find a perpetual commitment of lifetime retiree benefits when specific durational provisions expressly refer to benefit programs as running for the fixed period of the labor contact, finding that the durational provisions referring to the benefits program "show[ed] an intent to limit benefits to the duration of the agreement. It would render the durational clauses nugatory to hold that benefits continue for life even though the agreement which provides the benefits expires on a certain date." *Anderson,* 836 F.2d at 1519; *see also John Morrell & Co. v. United Food & Comm. Workers Int'l Union,* 37 F.3d 1302, 1307 (8th Cir. 1994) (finding no lifetime benefits where each master agreement contained a "term clause" limiting the duration of the retiree benefits to the duration of the master agreement). The Second Circuit has also found

that language guaranteeing a level of benefits "during the term of the agreement" created a benefit obligation running only for the fixed period of the labor contract and no longer. *Am. Fed. of Grain Millers, AFL-CIO v. Int'l Multifoods Corp.*, 116 F.3d 976, 981 (2d Cir. 1997).

### 3. *The Circuit Split Has Impeded the Collective Bargaining Process.*

The unresolved split in the courts of appeals has fostered bargaining and litigation strategies that have impeded the collective bargaining process. Unions decline to bargain over retiree benefits because they understand that the mere act of bargaining may serve as evidence that the benefits are not vested, and because they seek to preserve labor agreement ambiguities in order to invoke the *Yard-Man* inference. Moreover, injection of a presumption favoring one side of collective bargaining, as in circuits following *Yard-Man,* has also adversely affected collective bargaining.

In contrast, the presumption that this Court follows under federal labor law (that, generally, contractual obligations, including benefit obligations, end when a labor contract ends unless the parties clearly state otherwise) favors neither side and allows the parties freedom of contract. The *Yard-Man* inference favors one side of collective bargaining and thus disturbs the dynamics of bargaining established under federal labor law. *Senior*, 449 F.3d at 218.

The inconsistent approaches in the courts of appeals have even caused some circuits to permit the introduction of extrinsic evidence of an undisclosed intent never clearly expressed in labor contract provisions. The Fifth and Ninth Circuit have permitted retirees to introduce extrinsic evidence of lifetime benefits to overcome labor contract silence regarding the duration of retiree medical benefits. *See, e.g., United Paperworkers Int'l Union v. Champion Int'l Corp.*, 908 F.2d 1242 (5th Cir. 1990) (remanding with direction to consider extrinsic evidence where labor agreement did not speak to the

issue of vesting); *Bower*, 725 F.2d at 1223-24 (same). In such cases, retirees can prevail on the merits even when the labor contract contains no language whatsoever that retiree benefits endure for life or survive contract expiration.

Likewise troubling, *Yolton* permitted the introduction of extrinsic evidence of various prior oral and written statements of "lifetime" retiree benefits, outside of the labor contract, to trump the clear and express contract provision in the Letter of Understanding placing a cap on employer expenditures for retiree benefits. Pet. 18-20a. Under such circumstances, in the absence of the *Litton* presumption which favors neither side, unions can simply remain silent during the collective bargaining process in the hope of later convincing a court to review extrinsic evidence that retirees "heard" or "believed" that their retiree health benefits were "for life," less reliable evidence of intent than the language of the contract itself. In contrast, other circuits recognize that, under ordinary principles of labor contract interpretation, extrinsic evidence cannot vary the express terms of a labor contract or generate an ambiguity. *See, e.g., Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995).

## II. THE CONFLICT IN THE CIRCUITS REGARDING THE PROPER LEGAL STANDARD FOR DETERMINING RETIREE BENEFIT DURATION UNDERMINES FEDERAL POLICY UNDER ERISA.

Given the unpredictable nature of benefit costs over long periods of time, Congress declined to vest employee welfare benefits when it passed ERISA. The *Litton* presumption that benefits terminate with contract expiration unless the parties clearly provide otherwise comports with ERISA.

### A. Welfare Benefits Remain Unvested Under ERISA, Given Their Unpredictability Over Time.

Congress expressly exempted employee welfare benefits from ERISA's stringent vesting requirements. 29 U.S.C. § 1053. As a result of this congressional judgment, ERISA

provides, consistent with the *Litton* presumption, that welfare benefits do not automatically vest.

As this Court has remarked, Congress declined to vest employee welfare benefits under ERISA. *Curtiss-Wright v. Schoonejongen*, 514 U.S. 73 (1995) (noting that ERISA does not mandate minimum vesting requirements for welfare benefits) (citing *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 947 (6th Cir. 1990)). Congress did not impose such vesting "for fear that placing such a burden on employers would inhibit the establishment of such plans" and because it sought "to keep costs within reasonable limits" by permitting benefit amendment in a widely fluctuating market of unpredictable health care costs, *Adams,* 905 F.2d at 947:

> Congress evidenced its recognition of the need for flexibility in rejecting automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such plans are subject to fluctuating and unpredictable variables. Actuarial decisions concerning fixed annuities are based on fairly stable data, and vesting is appropriate. In contrast, medical insurance must take account of inflation, changes in medical practice and technology, and increases in the cost of treatment independent of inflation. These unstable variables prevent accurate prediction of future needs and costs.

*Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988).

### B. The *Yard-Man* Inference Remains Inconsistent with ERISA and Contravenes ERISA's Purpose to Encourage Employers to Provide Benefits Voluntarily.

Four circuits have criticized the *Yard-Man* inference as particularly inappropriate in light of Congress' exemption of employee welfare benefits from vesting under ERISA. Concerned about escalating health care costs and aware that circuits adhering to a presumption inconsistent with ERISA may unexpectedly find lifetime benefits, employers feel that they can avert future unbargained-for lifetime liabilities by

declining to provide retiree medical benefits to future retirees, contrary to ERISA's purpose of fostering a climate where employers voluntarily provide such benefits.

The Third Circuit has persuasively catalogued the fallacies and faulty assumptions in which the Sixth Circuit engaged in *Yard-Man* and its progeny. Echoing the rationale of the Eighth Circuit in *Anderson*, 836 F.2d at 1517-18, *Skinner* squarely rejects the "*Yard-Man* inference" of vesting ERISA-governed retiree insurance benefits: "Congress explicitly exempted welfare benefits from ERISA's vesting requirements. It, therefore, seems illogical to infer an intent to vest welfare benefits in every situation where an employee is eligible to receive them on the day he retires." *Skinner*, 188 F.3d at 140-141. *See also IAM v. Masonite Corp.*, 122 F.3d at 231; *Rossetto*, 217 F.3d at 543.

Reeling from unintended lifetime health care costs that cannot be reduced by requiring contributions from or deterring benefits for current retirees, many employers have ceased to offer retiree health care to current and succeeding generations of workers, contravening one of the purposes of ERISA, *i.e.*, to encourage employers to provide health care benefits voluntarily. In fact, between 1988 and 2005, the percentage of employers of 200 or more employees offering retiree health benefits dropped from 66% to 33%, a trend that increases the likelihood that future retirees will lack health care coverage under employer-sponsored benefit plans.[3]

## III. THE CIRCUIT SPLIT THREATENS THE FINANCIAL HEALTH AND GLOBAL COMPETITIVENESS OF AMERICAN COMPANIES.

The protracted split in the circuits in retiree benefit litigation has had disastrous consequences for American employers and for the nation. Contradictory and confusing decisions

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[3] Findings from the Kaiser/Hewitt 2005 Survey on Retiree Health Benefits at v, available online at http://www.kff.org/medicare/upload/7439.pdf (Kaiser/Hewitt 2005 Survey).

have inhibited labor contract negotiations, jeopardized the settled interpretation of labor contracts, forced plant closings and work force reductions by employers saddled with so-called legacy costs, and lessened the global competitiveness of U.S. businesses. At the same time, the deep-seated split has encouraged expensive benefit litigation as retirees and their unions shop for forums favorable to retirees.

### A. The Split Has Forced Work Force Reductions, Exacerbating the Problem of Paying For Escalating Health Care Benefits for Active and Retired Employees and Reducing American Global Competitiveness.

The American economy as a whole can ill afford the divisive split in the circuits, as the active American work force shrinks relative to the retiree population, and as the cost of health care benefits escalates. The influential and divisive *Yard-Man* decision and its progeny contributed to a downward spiral work force reductions driven in part by escalating retiree benefit costs.[4]

American companies have responded to circuit decisions imposing lifetime benefits by lowering active employee payroll costs in order to pay for retiree health benefits. The shrinking American work force of active employees now struggles to support an ever-increasing retiree population as baby boomers retire: while active employees outnumbered Social Security recipients by 5 to 1 in the 1960's, by 2050 that ratio will drop to less than 2 to 1.[5] That shrinking work force will further decline: the aging work force in America will retire in significant numbers over the next five years.

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[4] Rogers, *Rethinking Yard-Man: A Return to Fundamental Contract Principles in Retiree Benefits Litigation*, 37 Emory L.J. 1033 (Fall 1988) at 1033-34.

[5] John Boehner, Chairman, House Education & the Workforce Committee, *Assessing Retiree Health Legacy Costs: Is America Prepared for a Healthy Retirement?*, available online at http://edworkforce.house.gov/issues/107th/workforce/retireehealthcare/factsheet.htm.

At the Ford Motor Company, General Motors Corporation, Daimler-Chrysler and automotive suppliers Delphi and Visteon, for example, nearly half of the 302,500 UAW members will meet the age and years of service eligibility requirements in order to retire within the next five years,[6] swelling the ranks of retirees and reducing the ranks of those whose productivity purchases their health care benefits.

Health care costs have dramatically increased. Once so slight a cost that workers diverted little more than a few cents per hour worked towards benefits,[7] health care costs have annually increased by double digit inflation. Among employers surveyed for the Kaiser/Hewitt annual survey on retiree health benefits in 2005, the total retiree health care costs were estimated at $22.9 billion for 2005 and were estimated at 17.4 billion in 2004, an increase of almost 13% over the prior year's costs; health care costs for 2003 had also risen almost 13% over 2002 costs.[8] Some twenty years after the parties negotiated the then relatively inexpensive retiree health care benefits, the General Accounting Office predicted that employer retiree health benefit payments would rise to $25 billion annually by 2008.[9] One study concluded that the costs of physician care tripled, and hospital care costs rose by 600%, or three times the general inflation rate, between 1965

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[6] Hammond, *General Motors—A Legacy of Problems*, available online at http://www.carlist.com/autonews/2005/autonews_131.html (Hammond).

[7] Kelly, *Welfare Benefit Plans in Corporate Acquisitions and Dispositions*, 20 Real Property, Probate and Trust Journal 1045 (1985).

[8] Kaiser/Hewitt 2005 Survey at vi n.8; *Findings from the Kaiser/Hewitt 2004 Survey on Retiree Health Benefits* at vii., available online at http://www.kff.org/medicare/7194/index.cfm (Kaiser/Hewitt 2004 Survey).

[9] Testimony of Lawrence H. Thompson, Assistant Comptroller General, Human Resources Program, U.S. General Accounting Office, on September 15, 1988, to the House Ways and Means Oversight Committee, as reported in Sept. 19, 1988, BNA Pensions and Benefits Daily at 5.

(the decade when retiree benefits were first negotiated) and 1983 (the year that *Yard-Man* employed a vesting inference to interpret alleged labor contract ambiguity).[10]

These unintended and unanticipated costs also force American companies to price their products out of the domestic and global markets.[11] American manufacturing companies with sizeable retiree populations and labor contracts in place when *Yard-Man* changed the legal landscape simply cannot compete with foreign companies whose active work forces lack the years of service to near retirement.

**B. The Split Encourages Forum-Shopping As Companies Face More Stringent Accounting Standards for Post-Retirement Funding Liability.**

*Yolton* will fan the flames of forum-shopping, already rife because of the past split in the circuits, just as employers must digest Statement of Financial Accounting Standards (SFAS) No. 158, the new Financial Accounting Standards Board (FASB) standard requiring them to book the funding required for their post-retirement obligations on their balance sheets.[12]

Nearly two-thirds of the employers surveyed by Kaiser/Hewitt in 2005 reported having a cap on employer contributions to retiree health care, such as the negotiated cap that *Yolton* in essence nullified, an increase from fifty-four percent in 2004.[13] *Yolton* empowers retirees to file litigation

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[10] Chollet and Friedland, *Employer-Paid Retiree Health Insurance: History and Current Issues*, Employee Benefits Research Institute, (Sept. 9, 1985) at 2.

[11] For example, health care costs for General Motors Corporation's active workers and one million retirees account for an additional $1,525 per car; and the once robust company has lost market share in part because of retiree health care costs, as each active worker supports the post-retirement pension and welfare benefits for 2.5 retirees. Hammond.

[12] SFAS 158 was released on September 29, 2006 and is available online at http://www.fasb.org/pdf/fas158.pdf.

[13] Kaiser/Hewitt 2005 Survey at vii; Kaiser/Hewitt 2004 Survey at ix.

seeking to repudiate those caps, and another round of litigation circuit by circuit will begin on what Judge Posner characterized as the "much-litigated issue of when a right to health benefits that is granted to retired workers by a collective bargaining agreement (or an ERISA plan. . .) survives the termination of the agreement." *Rossetto,* 217 F.3d at 541.

Forum-shopping will begin anew, as retirees race to favorable circuits to challenge negotiated caps. This case presents an excellent example of forum shopping. Well aware that the Sixth Circuit infers that retiree benefits vest for life, the retirees in this case, who worked in the Seventh and Eighth Circuits that have rejected the *Yard-Man* inference, filed in the Sixth. Pet. 24-25. In another example of forum and perhaps judge shopping, retirees recently filed two cases in the Sixth Circuit against Boeing Company, voluntarily dismissing the first in Michigan and filing a second in Tennessee to avoid litigating in the Seventh Circuit, where Boeing filed a declaratory judgment action and where its plans were administered. *See*: *Boeing Company v. March,* Case No. 06cv4997 (N.D. Ill. 2006), ¶¶ 32-34.

American employers have long struggled to meet Financial Accounting Statement No. 106, an accounting standard promulgated by the FASB over objection by American businesses in part in reaction to *Yard-Man* and its progeny. FAS-106 required the inclusion of retiree benefits as contingent liabilities on company financial statements, typically in footnotes. SFAS 158 requires American companies to recognize the funded status of post-retirement benefits, of which health care benefits comprise the lion's share, directly on their balance sheets.[14] The new standard may require companies to

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[14] *Proposed Accounting for Pension and Other Postretirement Benefits,* KPMG LLP Defining Issues, March 2005; *FASB to Change Employers' Balance Sheet for Pensions and Retiree Health Benefits in 2006,* Aon Consulting Alert, April 5, 2006 at 2, available online at http://www.aon.com/about/publications/alert/alert_4_5_06.jsp.

reassess unfunded liabilities for post-retirement welfare benefits in order to report their post-retirement benefit plan funding accurately on company balance sheets.

Unless this Court resolves the split in the circuits and reaffirms the presumption that all obligations, including retiree benefits, end when labor contracts end absent clear agreement otherwise, some circuits will continue to vest lifetime benefits from silence and ambiguity. The resulting enormous and unanticipated liabilities under the proposed new booking standards will jeopardize the financial viability of American companies in the eyes of potential investors and shareholders.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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